rine made out of palm oil contains no artificial coloring; that the palm oil produces an oleomargarine in semblance of butter of identically the same color as butter by reason of the natural coloring of the oil.

There are other types of oleomargarine. I will now directly answer the Senator's question.

Mr. CAREY. May I ask the Senator another question?

Mr. BLAINE. Let me finish answering the question the Senator has already propounded.

There is oleomargarine and butterine made out of certain animal fats. Sometimes it is made out of the filthy, dirty grease which comes from the packing houses, which has been renovated. In order to make that oleomargarine or butterine in semblance of butter, it becomes necessary to add artificial coloring.

Then there is another form of oleomargarine made out of animal fats, and that is oleomargarine that is in semblance of butter made from the yellow fat of old dairy cows which are sent to the packing plants for slaughter. That animal fat has a yellow color like butter. So that animal fat is made into oleomargarine, and it is the yellow fat from the old dairy cows that makes the olemargarine or butterine in semblance of yellow butter.

Mr. CAREY. Does the Senator mean to say that the only fat of cattle used for oleomargarine is from old dairy cows, that no fat from beef cattle is used?

Mr. BLAINE. There are some of the packing plant greases which are of a little more value than that which goes into the soap industry, out of which oleomargarine and butterine are made, certainly. But I do not want to have that grease fed to the private soldier in our Army.

Mr. CAREY. I do not want that done either, but I think it hurts the livestock industry if they can not sell oleomargarine, and they have a right to the same consideration the dairyman receives.

Mr. BLAINE. Does the Senator know how much of the fat of a steer in value, is made into oleomargarine, and the amount the producer of the livestock receives for that?

Mr. CAREY. I am sorry I can not answer that.

Mr. BLAINE. It is a mere bagatelle. It is never reflected in the price of beef or pork or mutton to the extent of a penny.

Mr. CAREY. I think the sale of any product related to the livestock industry is reflected in the price.

Mr. BLAINE. I am not in favor of feeding packing house grease which comes from the livestock of this country to the private enlisted soldiers in our Army. I am in favor of giving him the same rations afforded others in the Army.

Mr. President, the action of the House is evidence of the economic struggle of the dairymen of this country. At no time in the last 30 years have dairy products been at such a low scale in price. To-day the price received for butter fat will not equal the cost of production. Yet we propose to permit the use of these substitutes; for whom? For the man who has no voice in the matter, for the men who is compelled to eat butter substitutes, for the private soldier, the enlisted man.

It is true that the President of the United States could, by an Executive order, increase any of the component parts of the rations, so that the enlisted soldier might receive that which he ought to receive from the Government of the United States, but the President has not done that.

So, Mr. President, I hope the motion to reconsider will prevail, and then that the amendment adopted by the Senate committee will be rejected. I ask for a yea-and-nay vote.

I have been asked what the amendment is. On January 10 the House inserted the following language in the pending bill, namely:

> That none of the money appropriated in this act shall be used for the purchase of oleomargarine or butter substitutes for other than cooking purposes.

The Senate committee struck out the provision so incorporated by the House, and the Senate adopted the amendment offered by the Senate committee. It adopted this when scarcely any of the Members of the Senate were on the floor, without any consideration whatever. For that reason I filed my motion for reconsideration of the vote by which the amendment of the Senate committee was adopted.

The PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Wisconsin to reconsider the vote by which the amendment of the committee was agreed to.

Mr. BLAINE. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Barkley	Fletcher	Johnson	Partridge
Bingham	Frazier	Jones	Phipps
Blaine	George	Kean	Reed
Blease	Goff	Kendrick	Robinson, Ark.
Bratton	Goldsborough	McGill	Schall
Capper	Hale	McKellar	Sheppard
Carey	Harris	Metcalf	Thomas, Okla.
Connally	Harrison	Morrow	Tydings
Copeland	Hatfield	Moses	Wagner
Couzens	Hebert	Norbeck	Walsh, Mass.
Dale	Heflin	Norris	Watson
Fess	Howell	Nye	Williamson

The PRESIDENT pro tempore. Forty-eight Senators having answered to their names——

Mr. COUZENS. Mr. President, I move that the Senate take a recess until 12 o'clock to-morrow.

Mr. REED. I make the point of order that the Chair has not announced the result of the quorum call.

The PRESIDENT pro tempore. Forty-eight Senators having answered to their names, there is not a quorum present.

Mr. COUZENS. I renew my motion, that we take a recess until 12 o'clock to-morrow.

Mr. FESS. I rise to a point of order.

The PRESIDENT pro tempore. The Senator will state it.

Mr. FESS. I make the point that without a quorum no motion is in order except a motion to adjourn.

The PRESIDENT pro tempore. The Senate entered into a unanimous-consent agreement that when we conclude business to-day we shall recess until 12 o'clock to-morrow. The question is on agreeing to the motion of the Senator from Michigan.

On a division, the motion was agreed to; and the Senate (at 6 o'clock p. m.), in accordance with the unanimous-consent agreement heretofore entered into, took a recess until to-morrow, Friday, January 30, 1931, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate January 29 (legislative day of January 26), 1931

UNITED STATES DISTRICT JUDGE

Albert M. Sames, of Arizona, to be United States district judge, district of Arizona, to succeed William H. Sawtelle, appointed United States circuit judge, ninth circuit.

UNITED STATES ATTORNEY

Thomas J. Sparks, of Kentucky, to be United States attorney, western district of Kentucky. (He is now serving in this position under an appointment which expired January 14, 1931.)

UNITED STATES MARSHAL

James H. Hammons, of Kentucky, to be United States marshal, eastern district of Kentucky. (He is now serving in this position under an appointment which expired January 18, 1931.)

HOUSE OF REPRESENTATIVES

THURSDAY, JANUARY 29, 1931

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

Almighty God, age by age shrouded in Thine eternal invisibility, in our darkest moods we find that faith in Thy personal presence is a terrible test. Have mercy upon us and forgive us; crown our beings with calmer spirits and wider vision that we may see that Thou art working everywhere,

even beyond the shadows, and keeping watch above Thine own. Happy is he who, looking up through the leafless branches, feels that Thou art there; happy is he who, looking beyond the dark depths of the open sky, feels that they are a canopy of blessing and that they only veil the unchangeable light; oh, happy is he who, when the day passes, feels that the night only unveils new worlds, and he sees deeper into the love which is at the heart of all. Save us from submission to our lower impulses, for life is too high and too holy and our calling too sacred and too splendid. Through Christ our Saviour. Amen.

The Journal of the proceedings of yesterday was read and approved.

JOHN T. DOYLE

Mr. LEAVITT. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (S. 4715) for the relief of John T. Doyle and pass the same, an identical House bill being on the calendar.

The SPEAKER. The gentleman from Montana asks unanimous consent for the present consideration of Senate bill 4715, which the Clerk will report.

The Clerk read the Senate bill, as follows:

Be it enacted, etc., That the Secretary of the Interior be, and he is hereby, authorized to issue a patent in fee to John T. Doyle, Crow allottee No. 1660, for land allotted to him under the provisions of the act of June 4, 1920 (41 Stat. L. 751), and designated as homestead.

The SPEAKER. Is there objection?

Mr. GARNER. Mr. Speaker, this is a rather unusual procedure. What is the emergency and the necessity to consider this bill at this time?

Mr. LEAVITT. Mr. Speaker, a similar House bill is on the Private Calendar far down, and very possibly would not be reached during the session. This is a matter that has to do with authorizing the Secretary of the Interior to issue a patent in fee to a quarter-blood Crow Indian who has not lived on the reservation for many years, who lives in Wyoming and has exemplified the fact that he is entirely able to handle his own affairs.

Mr. GARNER. Mr. Speaker, let us understand this parliamentary situation so that we may all be treated alike as far as possible. Here is a bill that was passed by the Senate and is on the Private Calendar, and probably will not be reached during this session of Congress on account of the fact that the House has not had as many days for the consideration of the Private Calendar as in my opinion it should have, and as I think we ought to have, before the end of this session. If we are going to adopt this policy, then all a man has to do who has a bill on the Private Calendar is to go to the Senate and get it passed there, and then get up in the morning hour and ask the Speaker for recognition to submit a unanimous-consent request to have the bill passed. I have no objection to this bill. I assume that it has merit or it would not have been reported and placed upon the Private Calendar. I merely call attention to that particular policy at this time so that some time in the future when somebody wants that kind of recognition and that opportunity he may be able to have it.

Mr. HUDDLESTON. Mr. Speaker, reserving the right to object, may I say to the gentleman from Montana [Mr. LEAVITT] that I have a very worthy bill on the Private Calendar which has also been passed by the Senate, and that ought to be passed in the House by all means. It was within four numbers of being reached on the calendar the last time we had a call of the calendar during the last session of the House. Will the gentleman please suggest how I may approach the Speaker and the majority leader and induce them to consent to recognize me to make a similar request to the one that the gentleman has just submitted? Just what art has the gentleman that some of the rest of us do not have?

Mr. LEAVITT. If the gentleman will permit, he has opportunity to pursue exactly the same procedure that I have followed in this case. It happens that I introduced the House bill, but I have brought the Senate bill up as chairman of the committee.

Mr. HUDDLESTON. So did I this other bill that I refer to.

Mr. LEAVITT. It was only at the request of the Indian Bureau that I did that; but at the same time this is a bill that was unanimously favorably reported from the committee and has the approval of the Secretary of the Interior. It was placed on the calendar long in advance of the passage of the bill by the Senate.

Mr. HUDDLESTON. All that is true also with reference to my bill.

Mr. LEAVITT. Anyone can follow the same procedure.

Mr. MAPES. Mr. Speaker, if this is going to take time, I shall object.

Mr. LEAVITT. Will the gentleman withhold that objection for a moment?

Mr. PARKS. Mr. Speaker, I demand the regular order.

The SPEAKER. Is there objection?

Mr. STAFFORD. For the time being, I ask the gentleman to withdraw his request.

The SPEAKER. Objection is heard.

WORLD WAR VETERANS' LEGISLATION

Mr. RANKIN. Mr. Speaker, I rise to a question of the privilege of the House and present a resolution which I send to the desk and ask to have read.

The SPEAKER. The gentleman from Mississippi offers a resolution, under the privilege of the House, which the Clerk will report.

The Clerk read as follows:

Mr. RANKIN offers the following resolution:

Whereas the chairman of the Committee on World War Veterans' Legislation is unavoidably absent on account of illness and unable to be present and preside over said committee; and

Whereas there is no one else authorized to act for him in calling said committee together and presiding over its deliberations; and

Whereas there is pending before that committee various and sundry bills providing for relief for the disabled veterans of the World War, their widows, and orphans; and

Whereas it is vitally necessary that said committee meet and consider such legislation without delay: Therefore be it

Resolved, That the members of the said Committee on World War Veterans' Legislation be, and they are hereby, authorized and directed to meet in the committee room now provided for said committee on Tuesday, February 3, 1931, at 10 o'clock a. m., to elect a temporary chairman and consider the legislation pending before said committee.

Mr. MAPES. Is this a unanimous-consent request?

The SPEAKER. It is introduced under the claim of privilege of the House.

Mr. MAPES. Does the Speaker hold it is privileged?

The SPEAKER. The Chair has not had much opportunity to consider it. The Chair is inclined, however, to think that inasmuch as this committee is a legislative agent of the House and the question deals with legislative procedure, it is a matter of privilege.

Mr. MAPES. Does the resolution come as the act of the committee or as the act of an individual Member of the House?

The SPEAKER. The Chair understands as an act of an individual Member of the House under the claim of privilege of the House.

Mr. MAPES. Mr. Speaker, I do not know that I care to discuss the merits of the resolution; but the program of the House to-day is to take up a bill which has been pending in the House and in Congress for a great many years, and I understand that those responsible for the business of the House would like to dispose of that bill to-day. Unless these extraneous matters are privileged I shall object to their being considered this morning.

Mr. TILSON. Mr. Speaker, may I ask the gentleman from Mississippi a question? The chairman of the Veterans' Committee is one of the most beloved and most honored Members of this House. He is ill in the hospital. Here is a resolution that attempts to call a meeting and, so far as I know, the gentleman from South Dakota [Mr. JOHNSON] has not been consulted in regard to it. It would seem to me that under the circumstances it would be a discourtesy to take up this resolution and pass it, even though it be privileged.

Mr. RANKIN. Let me say to the gentleman from Connecticut that he is entirely mistaken. The gentleman from

South Dakota [Mr. JOHNSON] is ill; he can not be here to call this committee. This is no reflection on him. It is simply an attempt to get this committee together.

Mr. TILSON. How will the gentleman from South Dakota [Mr. JOHNSON] receive this?

Mr. RANKIN. The gentleman from South Dakota can not be here.

Mr. TILSON. I know; but the gentleman from South Dakota might at least be consulted, and I should dislike very much to do anything that might be considered by the gentleman from South Dakota as a discourtesy.

Mr. RANKIN. If the gentleman from Connecticut and the gentleman from Michigan will permit, this resolution is clearly privileged. If the gentlemen will permit it to go through there will be no controversy over it. If the gentlemen will consult the members of the Committee on Veterans' Legislation on their side they will find that at least the members who have discussed the matter with me desire this committee called together.

Mr. MAPES. Unless the Speaker holds this is privileged, without any reference to the merits of the resolution itself, but for the purpose of expediting legislation which everyone expects to be considered to-day, I object to its consideration to-day.

Mr. BLANTON. The Speaker has held it privileged.

Mr. TILSON. I ask the gentleman from Mississippi [Mr. RANKIN] as a matter of courtesy to a most honored Member of this House that it may go over until to-morrow so that some one may speak to the gentleman from South Dakota [Mr. JOHNSON] in regard to the matter. I should dislike very much to vote for such a resolution as this now, though I might do it to-morrow with perfect willingness.

Mr. RANKIN. The gentleman will agree with us to take it up to-morrow?

Mr. TILSON. It will be in the same status to-morrow morning as it is now, but I should like very much to have it go over for a day until the gentleman from South Dakota [Mr. JOHNSON] may be consulted.

Mr. RANKIN. Then, with the understanding it will have the same status before the House to-morrow as it has at this time, I will agree to wait until to-morrow.

The SPEAKER. The Chair thinks the resolution introduced under the claim of privilege of the House is in order. The Chair desires to emphasize the fact that he has said repeatedly it is always within the power of the House to call a meeting of a committee if it so desires under such circumstances as these.

Mr. CRISP. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. CRISP. Would it be in order to offer, under the claim of privilege of the House, a motion to call a meeting of a committee when the chairman of that committee is well and not in the hospital?

The SPEAKER. Under those conditions the committee would be functioning, and it would be possible. Under these conditions it seems impossible.

Mr. CRISP. How would it be possible for the committee to function when the chairman wilfully refuses to call the committee together?

Mr. TILSON. Mr. Speaker, is it necessary to take up these extraneous matters?

The SPEAKER. That question is not involved in the present situation.

Mr. CRISP. I think it is.

The SPEAKER. It does not in this case.

Mr. RANKIN. This is a serious, honest attempt to get this committee together to consider legislation.

The SPEAKER. And the Chair is aiding the gentleman from Mississippi [Mr. RANKIN] so far as he can in that procedure.

ADJUSTED-SERVICE CERTIFICATES

Mr. TAYLOR of Tennessee. Mr. Speaker, I ask unanimous consent to extend my own remarks on the subject of pending bonus legislation.

The SPEAKER. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

Mr. TAYLOR of Tennessee. Mr. Speaker and ladies and gentlemen of the House, under the leave to extend my remarks in the RECORD, I insert a communication received by me from Col. R. H. Clagett, of the Knoxville Journal, which contains some very illuminating information on the subject of cash redemption of the soldiers' bonus certificates. The Knoxville Journal conducted a poll of the ex-service men residing within its circulation on pending bonus legislation, and 5,476 ballots were cast in favor of immediate payment, 5 ballots for the 25 per cent proposal, and 5 ballots in favor of the existing deferred-payment plan.

Mr. Speaker, I regard the proposed bonus legislation the most important proposition pending before the Congress for the relief of the economic situation now confronting the Nation. A cash payment of the outstanding bonus certificates will, in my judgment, do more to revive business and incidentally reduce unemployment and promote and speed up a general economic recovery than any other thing that could happen. The money thus put into immediate circulation will not benefit any one particular class or activity, but will permeate every avenue of our national life and will stimulate conditions generally. Of course, whatever legislation is enacted should provide that the holders of these certificates shall have the option of continuing his certificate until it matures under existing law; however, I seriously doubt if any considerable number of holders would exercise such an option.

Colonel Clagett's letter is as follows:

KNOXVILLE, TENN., *January 23, 1931.*

Hon. J. WILL TAYLOR,
Representative Second Congressional District of Tennessee, Washington, D. C.

DEAR SIR: A few weeks ago the Knoxville Journal conducted a poll of World War veterans to ascertain their wishes in respect of payment of adjusted-compensation certificates. As a result of this poll 5,476 ballots were cast in favor of immediate cash payment, 5 ballots were cast in favor of 25 per cent, and 5 ballots were cast in favor of existing deferred-payment plan. It was one of the most extraordinary responses to a newspaper poll that we have ever experienced. In addition to the ballots themselves hundreds of letters were received from ex-service men declaring their desire that their certificates be paid immediately. In presenting this matter the Journal printed arguments of Congressmen and others on all sides of the question so that there could be no misunderstanding about .t The poll was conducted for only one week.

Knowing your deep interest in the welfare of ex-service men, we are forwarding you the ballots as they were sent to the Journal. Will you be so kind as to call their attention to Congress and, if you will, also call the attention of other Tennessee Representatives to the ballots that originated in their respective districts. Although most of them came from the second district, there are many from the first and third districts and a few from other districts in the State.

With best wishes we are, yours respectfully,

THE KNOXVILLE JOURNAL,
R. H. CLAGETT,
General Manager.

ASHA FAISON COLWELL WILLIAMS CHAPTER, UNITED DAUGHTERS OF THE CONFEDERACY

Mr. HILL of Alabama. Mr. Speaker, I ask unanimous consent to address the House for one minute.

The SPEAKER. Is there objection to the request of the gentleman from Alabama?

There was no objection.

Mr. HILL of Alabama. Mr. Speaker, on last evening, in the caucus room of the House Office Building, the Asha Faison Colwell Williams Chapter, United Daughters of the Confederacy, held memorial exercises in memory of the late Senator Francis E. Warren, of Wyoming, and the late Maj. CHARLES M. STEADMAN, of North Carolina. When this chapter was organized some two years ago these two distinguished citizens and gallant soldiers were present. Last night this chapter did honor to the one who followed Grant and wore the blue as well as to the one who followed Lee and wore the gray. Beautiful tributes were paid to these two men who lifted high the light of service for the guidance of our feet, and who gave so much of their heart's devotion to our coun-

try's cause. One of these beautiful tributes was paid by the gentleman from North Carolina [Mr. HANCOCK] to Major STEDMAN, and, Mr. Speaker, I ask unanimous consent that I may extend my remarks by printing in the RECORD the address of the gentleman from North Carolina.

The SPEAKER. Without objection, it is so ordered.

There was no objection.

Mr. HILL of Alabama. Mr. Speaker, under leave granted me to extend my remarks in the RECORD, I place herein the able and beautiful address of the distinguished gentleman from North Carolina [Mr. HANCOCK] on the late Maj. CHARLES M. STEDMAN, of North Carolina, delivered last evening in the caucus room of the House Office Building at the memorial exercises held by the Asha Faison Colwell Williams Chapter, United Daughters of the Confederacy, honoring the memory of Major STEDMAN and the late Senator Francis E. Warren, of Wyoming.

The address is as follows:

MAJ. CHARLES M. STEDMAN

The invitation extended to me through your chapter president to be present on this honored occasion and be given the privilege to record my estimate of the noble life and great career of a former honorary associate member of this chapter, the late CHARLES MANLEY STEDMAN, makes me very grateful and happy. To me it is a holy pleasure as well as a real inspiration to be permitted this evening to pay a tribute to the cherished memory of one of North Carolina's most illustrious sons.

Man's effort to analyze the life of a truly great man at best can be but an approximation. Being a member of the younger generation it is unfortunate for me that I can not portray his life and character to you as could one who lived in close contact and with intimate personal knowledge of his active public career and, in consequence, draw upon a rich store of personal experiences and reminiscences to impress their characteristics upon you. As a young man I had known him as a small boy knows his people's hero. On the few occasions that I was privileged to see him, his personality, kindly and courtly manner, and majestic appearance made an inerasable impression upon me. Whenever he came to my home town, Oxford, men and women of every walk of life, as well as boys and girls, sought his presence to show their admiration and love; and I have been told that he was greeted in this same manner not only throughout the entire fifth district, which he represented in Congress for nearly 20 years, but also throughout the entire State of North Carolina. He was always affectionately referred to as the "Major."

Major STEDMAN was born at Pittsboro in Chatham County, N. C., on January 29, 1841, 90 years ago to-morrow. His father, Nathan A. Stedman, was a man of strong character, ardent temperament, and decided political convictions. His mother, who was Miss Euphania Wilson White, of Richmond, Va., was a highly endowed woman and exerted a strong moral and intellectual influence upon young Stedman. Blessed with such fine parentage, Major STEDMAN'S early surroundings were conducive to those traits of character which in manhood he so beautifully exemplified.

After receiving his scholastic training, first at the hands of Rev. Daniel McGilfrey (afterwards the well-known missionary to Siam), and later at Donaldson Academy at Fayetteville, to which place his parents moved when he was 12 years of age, at the age of 16 he entered the University of North Carolina. His brilliant record there won for him the admiration of both faculty and students. In 1861 he was graduated from this institution with the highest honors of his class.

Immediately upon leaving the university, war having been declared between the North and the South, he enlisted as a private in the Fayetteville Independent Light Infantry, and served with that company in the First North Carolina Regiment at the Battle of Bethel, June 10, 1861, the first battle and the first Confederate victory of the war. Upon the organization of the Forty-fourth North Carolina Regiment he was appointed first lieutenant of the Chatham Company E, and his regiment was soon sent to Virginia, where he served under Lee and in most of his campaigns. Because of his genius in military strategy and bravery in action, he was soon promoted to be captain of his company and then to be major of his regiment. He was wounded at the Wilderness, at Spottsylvania Courthouse, and on the Squirrel Level Road in front of Petersburg. In the army, as at school and at college, he exhibited those traits which afterwards characterized his honorable career as a lawyer and statesman. He had the distinction of being one of the 12 Confederate soldiers who were engaged in the first Battle of Bethel and who surrendered with Lee at Appomattox. During this entire period he served without a furlough. To quote a comrade: "There was nothing too good for the men he commanded; he wished no comfort they could not share; he required of them nothing he would not do himself; and their misfortunes sank deep into his sensitive, delicate, and sympathetic nature."

After the war was over Major STEDMAN was forced to begin life anew. After completing his course in the study of law under the late Hon. John Manning at Pittsboro in 1867 he settled in Wilmington and entered upon the practice of his profession. Here he built up a large and lucrative practice, and because of his exceptional ability soon won the respect and esteem of both the bench and the bar. In 1884 he received the nomination of the Democratic Party for the office of lieutenant governor and was elected on the ticket with the late Governor Scales. In this office he made a brilliant record and earned the reputation of having been one of the finest and fairest presiding officers which the Senate of North Carolina had had in all its great history. In 1888 and again in 1904 he was a candidate for the Democratic nomination for governor, but was defeated in both campaigns after a brilliant and memorable contest. Both of these contests served to bring out his noble qualities in fine relief. On the day after his defeat for the governorship in the last contest he made a statement which should be treasured by every man in public life and recorded by historians as an example to all true patriots: "The man to whom no greater calamity comes through life than disappointment in securing an office should be counted fortunate and happy. I value the honor and glory of North Carolina far above my own aspirations or the aspirations of any man, and I believe the success of the Democratic Party to be inseparably connected with the prosperity and good name of our State. So thinking, when our great party in convention assembled has declared its choice, its actions should receive an honest and cheerful acquiescence."

In 1908 he moved to Greensboro and continued in the practice of law. During this period he was recognized as one of the leading lawyers of the State and held many positions of honor and trust.

In 1910 he was nominated and elected to represent the fifth congressional district of North Carolina, known as the "Imperial Fifth," in the Congress of the United States, and for eight consecutive times thereafter was the unanimous choice of his party and the successful candidate. As a legislator he was wise, thoughtful, tireless, progressive, and practical. He was always a friend and tribune of the people.

Within the past few weeks it was my happy duty, together with several of North Carolina's distinguished Representatives in Congress, to present North Carolina's bid and claims for the establishment of the new soldiers' home to be located in the southeast, and among the claims presented especial emphasis was given the fact that North Carolina was the home of Maj. CHARLES M. STEDMAN. I felt then, and I feel now, that the location of this home in North Carolina would be a beautiful and deserving offering to the memory of this brave and gallant soldier.

In his departure last year from the life here to the greater life beyond, the last of those who followed Grant and the last of those who followed Lee passed out of the Congress of our country. I deem it worthy that the picture which was made several years ago of the two distinguished Americans whose memory we honor this evening should be enlarged and preserved in the Halls of Congress as a fine portrayal of the spirit of friendship and brotherly love of a united people. In doing this the ties which bind every section of our country will be made stronger and more enduring. The descendants of both Union and Confederate soldiers, as they rejoice over the glory of our reunited country and gaze in reverence upon this portrait, will rise up and with one acclaim bless the name of Francis E. Warren and CHARLES M. STEDMAN.

To-day Major STEDMAN lies at rest among the people whom he loved and who in return were loving and loyal to him. To many in the years to come his name may be but a memory. But his courage in war, his patriotism in peace, his unselfish devotion to the rights of man, are a memory which sweetens the sleep of every North Carolinian, strengthens the arm of every American, and heartens the hope and inspires with ambition every young man who wants to do the right for the right's sake in this new age in which we now live. May the God of our fathers bless to us the eternal memory of Maj. CHARLES MANLY STEDMAN, North Carolina's great son of the Confederacy.

RESALE PRICE BILL

Mr. PURNELL. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 245.

The SPEAKER. The gentleman from Indiana calls up a resolution which the Clerk will report.

The Clerk read the resolution, as follows:

House Resolution 245

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of H. R. 11, a bill to protect trade-mark owners, distributors, and the public against injurious and uneconomic practices in the distribution of articles of standard quality under a distinguishing trade-mark, brand, or name. That after general debate, which shall be confined to the bill and shall continue not to exceed two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interstate and Foreign Commerce, the bill shall be read for amendment under the 5-minute rule. At the conclusion of the reading of the bill for amendment the committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and the amendments thereto to final passage without intervening motion except one motion to recommit.

Mr. PARKS. Mr. Speaker——

The SPEAKER. For what purpose does the gentleman from Arkansas rise?

Mr. PARKS. To make a point of order.

The SPEAKER. The gentleman will state it.

Mr. PARKS. This matter has been pending for 10 or 15 years——

The SPEAKER. The gentleman will state his point of order.

Mr. PARKS. I am trying to get to it.

The SPEAKER. The gentleman will state his point of order without argument.

Mr. PARKS. I am trying to do that. I make the point of order that there is not a quorum present, but I wanted to make a point of order on another matter.

The SPEAKER. If the gentleman wants to make a point of order on another matter the gentleman will state it.

Mr. PARKS. I make the point of order that there is not a quorum present.

The SPEAKER. The Chair will count. [After counting.] Two hundred and twenty-one Members are present, a quorum.

Mr. PURNELL. Mr. Speaker, ladies and gentlemen of the House, I shall take only a minute in presenting this rule and then shall yield to the gentleman from Pennsylvania [Mr. KELLY], who is the author of the bill.

The purpose of this resolution is to make in order the immediate consideration of the bill (H. R. 11) to protect trade-mark owners, distributors, and the public against injurious and uneconomic practices in the distribution of articles of standard quality under a distinguishing trade-mark, brand, or name, and is commonly known throughout the country as the Capper-Kelly bill.

The Committee on Rules conducted hearings on this bill last May, and at the urgent request of the Committee on Interstate and Foreign Commerce, which had previously reported the bill by an almost unanimous vote, reported this resolution.

Mr. BURTNESS. Will the gentleman yield?

Mr. PURNELL. I yield.

Mr. BURTNESS. I know the gentleman does not want to make a misstatement. The bill was not reported by an almost unanimous vote. If I remember correctly it was reported by a majority of 1 vote, certainly not to exceed 2 or 3 votes.

Mr. PURNELL. The hearings before the Rules Committee indicated that it was reported by a vote of 11 to 6, with some 6 or 7 members absent.

Mr. PARKER. Twelve to nine.

Mr. BURTNESS. My recollection was that it was 11 to 10, but that is immaterial.

Mr. PURNELL. Be that as it may, this bill is before the House at the urgent request of the Committee on Interstate and Foreign Commerce, which reported it favorably.

The matter is of such general importance and has been discussed so much throughout the country that the Committee on Rules did not want to take the responsibility of withholding consideration and, therefore, this resolution is presented. It makes consideration in order to-day. This is the customary rule. The resolution provides for two hours of general debate, to be divided equally between the chairman and ranking member of the Interstate and Foreign Commerce Committee, at the conclusion of which the bill will be read for amendment, under the 5-minute rule, following which the previous question will be considered as ordered, and one motion to recommit will be in order.

Mr. BURTNESS. Will the gentleman yield further?

Mr. PURNELL. Yes.

Mr. BURTNESS. Of course, I am not opposed to a rule for consideration and I do not want to be construed as taking that position. This rule was reported toward the end of the last session, at a time when there was a great deal of congestion in the House.

Mr. PURNELL. June 11.

Mr. BURTNESS. When it was necessary to cut the time as much as possible if the bill were to be considered before the close of that session.

Mr. PURNELL. That is a fact.

Mr. BURTNESS. I am wondering whether the committee has since that time considered the advisability of allowing more time than just one hour on a side. This is a tremendously important question, a very controversial question, and I know there is a demand for a great deal of time. I was wondering whether the Rules Committee does not feel it would be proper to allow more than one hour on each side, so that there might be a thorough discussion of the bill?

Mr. PURNELL. I will say that the committee has not discussed that question since reporting this resolution. We felt and feel now that two hours of general debate, with full opportunity under the 5-minute rule, will be sufficient, especially in view of the fact that this is the short session of Congress and that we would like to see this bill completed to-day.

Mr. BURTNESS. I realize that if it had been considered in the closing days of the last session more than one hour on a side could not have been allowed, but I think the legislative situation now is different. We have sent a great many bills over to the other body and, while we have not been stalling, we have not been under the pressure we were under toward the end of the last session. For that reason I was in hopes the Rules Committee might favorably consider the question of somewhat increasing the time. A number of gentlemen sitting around here now are saying that two hours is not enough time. I want to make that suggestion to the gentleman.

Mr. PURNELL. The purpose of this bill, ladies and gentlemen, according to the bill itself is to protect trade-mark owners, distributors, and the public against injurious and uneconomic practices in the distribution of articles of standard quality under a distinguishing trade-mark, brand, or name.

In brief, the bill permits a contract between vendor and vendee that the vendee will not resell an article or commodity specified in the contract except at a stipulated price.

I am not going to take any time to discuss the merits of the proposed legislation, but this bill seems to offer some ray of hope to the little independent dealer, especially in the rural community, who is the backbone of that community and who is to-day fighting the onward march of the chain store, which is about to crucify him, with his back against the wall. I hope if the bill is passed and enacted into law it will serve that purpose.

Mr. RAMSEYER. Will the gentleman yield for a question?

Mr. PURNELL. I have promised some time to gentlemen here.

Mr. RAMSEYER. The gentleman stated that the reason the Rules Committee reported out this resolution was because they did not want to assume the responsibility of preventing consideration of the proposed legislation. Is that the only reason the Committee on Rules had for reporting out the resolution?

Mr. PURNELL. No; the Rules Committee does not operate on that basis.

Mr. RAMSEYER. Does the Rules Committee indorse this legislation?

Mr. PURNELL. It has brought it before the House.

Mr. RAMSEYER. Simply for the purpose of consideration.

Mr. PURNELL. What other function has the Rules Committee?

Mr. RAMSEYER. Can the gentleman state, in a general way, in what manner it will help the little independent retail dealer?

Mr. PURNELL. I said that was contended.

Mr. RAMSEYER. Will it apply to the sale of farm machinery?

Mr. PURNELL. I shall ask the gentleman to submit that interrogatory to the author of the bill, to whom I am about to yield.

Mr. RAMSEYER. The gentleman has the floor to explain the bill and its purposes and he himself has expressed the hope that the bill be enacted into law.

Mr. PURNELL. If the gentleman recalls my statement, I said it is contended this bill will do certain things, and

if it is enacted into law I most certainly hope those purposes will be accomplished.

Mr. RAMSEYER. The gentleman does not wish to state what it will accomplish, but what it is supposed to accomplish?

Mr. PURNELL. The gentleman realizes, I am sure, I am presenting a resolution here which will make in order the consideration of this bill.

Mr. RAMSEYER. Will it apply to the resale of farm machinery?

Mr. PURNELL. I am not sure; perhaps it will.

Mr. BURTNESS. The gentleman surely is not in doubt as to whether it applies to farm machinery if the name of the manufacture or the trade-mark is on it?

Mr. PURNELL. The gentleman is probably correct.

Mr. BURTNESS. For instance, if it is a McCormick or a Deering combine.

Mr. PURNELL. Mr. Speaker, I yield 10 minutes to the gentleman from Pennsylvania, the author of the bill [Mr. KELLY]. [Applause.]

Mr. KELLY. Mr. Speaker and Members of the House, of course, I do not need to say that this is a day I long have sought. I have endeavored in every way possible here and elsewhere to arouse an interest in what I consider to be a fundamental principle of honest, fair business, which involves the future of our American system of business.

Here is a rule which provides for fair consideration, under the general rules of the House, of the bill H. R. 11, known as the fair trade act. It has been before the House for years, and I want to assure you that if anyone has any doubt about its importance you have the highest authority in the United States.

This bill had its inception in a magnificent dissenting opinion by a magnificent Associate Justice of the Supreme Court, Oliver Wendell Holmes. [Applause.] In his dissenting opinion in the Doctor Miles case of 1911, which was the first time the principle of resale price agreements reached the Supreme Court, here is what he said in dissenting to the majority opinion:

> I can not believe that in the long run the public will profit by this court permitting knaves to cut reasonable prices for some ulterior purpose of their own and thus to impair, if not destroy, the production and sale of articles which it is assumed to be desirable that the public should be able to get.

The moment that dissent was given it was inevitable that there would be an effort made to translate that opinion into law, and that effort immediately began. Public-minded men all over this country took an interest in the question. Among them was then Attorney, now Associate Justice, Louis D. Brandeis, of the United States Supreme Court. He wrote the first bill that was submitted to Congress to legalize this contract, and this is what he said about it:

> The Supreme Court merely expresses its opinion that such agreements are against public policy, and it believes Congress meant to prohibit them when it enacted the Sherman law.
>
> I submit that this is an erroneous supposition. There is nothing against the public interest in allowing me to make an agreement with a retail dealer—the public interest clearly demands that price fixing be permitted.

Thomas A. Edison, whose name shines like one of his own lights as a symbol for square dealing, makes this statement:

> Fair competition between manufacturers is a good thing and will inevitably result in fair prices to the public. The competition developed by the price-cutting methods of certain retailers is harmful to the manufacturer, destructive to the legitimate dealer, and of no lasting benefit to the small portion of the public temporarily affected by it. I heartily approve of the Capper-Kelly bill.

The President of the United States had experience with this problem, because for eight years he was Secretary of Commerce. In his speech at Palo Alto here is what he said:

> As Secretary of Commerce I have been greatly impressed by the fact that the foundation of American business is the independent business man. We must maintain his opportunity and his individual service. He and the public must be protected from unjust competition, from domination, and predatory business.

If any Member of this House wants reasons for giving consideration to this measure, I give him the names of Holmes, Brandeis, Edison, and Hoover.

Mr. Speaker, this bill provides for the legalization of resale price agreements between independent manufacturers and independent dealers where identified products are involved. It ought to be thoroughly understood, and yet there has been vast misrepresentation about it.

This contract is now and always has been legal in the great commercial countries like England, France, Germany, Spain, Norway, Sweden, Denmark, and all the important countries of the world.

State courts have declared it legal, and it was in general use in interstate commerce up to 1911.

There is nothing strange about this proposal to give the little manufacturer a chance with the big corporations and combines engaged in manufacturing.

I want you to remember that neither the Supreme Court nor no other court has ever said that there was anything wrong about price maintenance in itself. They have interfered with that policy only as it relates to agreements.

Mr. COX. Will the gentleman yield?

Mr. KELLY. I yield.

Mr. COX. Did not Justice Hughes in the Miles suit say that this contract did constitute a restraint of trade, not only under the antitrust law but under the administration of the common law?

Mr. KELLY. I have quoted Justice Holmes and Justice Brandeis in saying that that position was erroneous. The only reason we are acting here to-day is because it is necessary for Congress to establish public policy. As a matter of fact, many manufacturers to-day are controlling the resale price with judicial sanction.

How do they do it? This is one way: They establish their own chain stores and sell their own products, and control the final price on every unit. They can go further and establish an exclusive retail agency and control the final price of every unit through that method. That is the way the automobile industry has made its marvelous progress. Then the Supreme Court has ruled that the General Electric Co. has a right to consign its Mazda lamps to 33,000 separate retailers, and maintain the price by keeping title until the consumer buys the article. It thus names the price. The Supreme Court also has said that a manufacturer may announce in advance his intention to refuse to sell to price cutters. That system has been established by many great concerns that have capital enough to put agents all over this country, because the Supreme Court said that if information as to price cutters came from other retailers then it becomes an implied contract and is illegal. That is the situation at the present time. What does it mean to the little independent manufacturer? He is helpless, for he does not have the capital to use any of these methods. Therefore, what this bill will do, so far as the little manufacturer is concerned, is to put the little fellow on an equal basis so he may compete with great manufacturers who now have an advantage. We have heard on the floor of this House since the 3d of December that this is a manufacturers' bill, that it is for the purpose of giving an unjust privilege to the great manufacturers to obtain more profits, and yet everyone of you sitting before me has had a letter from the Associated Grocer Manufacturers of America asking you to vote against this bill.

The Associated Grocer Manufacturers of America is a great aggregation with headquarters in New York City. On their list you will find packers, those concerns which it has been insinuated are for this bill. These packers are named in that letter that you received. They frankly say that they oppose this bill. Why? Is it reasonable that if we are going to give them some unusual and undue advantage to secure extra profits that they would be asking you to vote against the bill? They know that when this bill goes through the little independent packers and producers who are now helpless will compete effectively with them. That is the reason they oppose it.

The SPEAKER. The time of the gentleman from Pennsylvania has expired.

Mr. PURNELL. Mr. Speaker, I yield the gentleman two more minutes.

Mr. BANKHEAD. Mr. Speaker, before that is done, will the gentleman from Indiana yield to me?

Mr. PURNELL. Yes.

Mr. BANKHEAD. There are one or two questions I would like to propound to the gentleman from Pennsylvania on phases of this bill that he has not yet had an opportunity to discuss, and with the gentleman's permission—I understand he is going to yield me 30 minutes—I would like to yield to the gentleman three or four of those minutes.

Mr. PURNELL. Mr. Speaker, I yield 30 minutes to the gentleman from Alabama.

The SPEAKER. And the Chair understands that the gentleman also yields two minutes to the gentleman from Pennsylvania?

Mr. PURNELL. Yes.

Mr. BANKHEAD. Mr. Speaker, I yield three minutes to the gentleman from Pennsylvania.

The SPEAKER. The gentleman from Pennsylvania is recognized for five minutes.

Mr. RAMSEYER. Mr. Speaker, will the gentleman yield?

Mr. KELLY. Yes.

Mr. RAMSEYER. I am more interested in the detailed working of the bill than I am in what the Supreme Court has said. The gentleman referred to the protest of the Grocer Manufacturers' Association. Every Member of this body this morning received a protest from the American Farm Bureau Federation against this bill. I want the gentleman to explain to this House just how this bill will affect the farmer.

Mr. BANKHEAD. And will the gentleman let me follow that by submitting a question to the gentleman?

Mr. RAMSEYER. Yes.

Mr. BANKHEAD. I am one of those, and I speak candidly, who from his present understanding of this bill has grave doubts as to whether it is going to effectuate the relief for the independent mercantile operator that is claimed for it. I want the gentleman to explain how, under the operation of this bill, the little, independent merchant is going to get relief from the chain-store system.

Mr. KELLY. I will take up that phase of it, and then try to get to the question of the gentleman from Iowa [Mr. RAMSEYER]. In general debate we will have a chance to go further into it.

There is a very real evil, admitted by everybody, in retailing, and that is the predatory practice of taking a standard, widely known, and widely desired article and cutting its price, and in that way luring the public into the store and persuading them to buy other things at excessive profits. I do not make that statement on my own authority, because William J. Baxter, the highly paid research specialist of the organized chain stores, has said that that is their system. He maintains that it is perfectly proper to lose money on a well-known article that can be compared and then make up the loss and more on "blind" articles, as he called them—articles that have no name; that can not be compared. In the National Cash Register office in Dayton last spring I picked up a booklet put out by Mr. Gallagher, the head of a chain of drug stores. He went into detail and stated that the system of chain stores is to sell well-known goods at less than the cost of production, and then sell other goods to a point where the profit is large over the whole transaction. That system can not be successfully denied, for there is ample testimony from chain-store spokesmen.

The little independent, next door to a chain-store unit, is immediately faced with the proposition that either he must cut his prices to compete with the chain store or refuse to sell the identified article on which he can no longer make any profit.

Of course, he can not continue losing money on articles as can the unit of the chain store, whose losses may be recouped through a thousand other units. Yet the general scale of prices may be higher in the chain store than in the independent establishment.

The public is deceived and duped into believing that they get bargains on all articles in the chain store when, as a matter of fact, they are paying exorbitant prices on many of them. The result of that practice has been that 300,000 little independent merchants have been put out of business in the last eight years largely through this practice of chain stores. This is the weapon they use for the destruction of the independent. That is why this opposition comes here to-day. Let us give the little independent retailer a fair chance to sell his identified goods in fair competition with the chain stores, and he will ask no favors from you or me. I have taken the hands of thousands of them in the last 10 years and talked to many of them personally, and I have never had one of them say he was afraid of the chain-store system on account of its size. What they do fear is this deadly unfair competition, this practice of fooling their customers into believing that everything is sold at a bargain price when in fact extortionate prices are secured on unknown, unstandardized goods.

As to the question of the interest of the farmer, I read the other day the letter sent me by L. J. Taber, master of the National Grange, showing how farm products were made leaders by chain stores and the market disorganized and depressed.

The SPEAKER. The time of the gentleman from Pennsylvania [Mr. KELLY] has expired.

Mr. KELLY. Also, I want to state that the manufacturers of agricultural implements whom this agreement affects must be in competition. [Applause.]

Mr. BANKHEAD. Mr. Speaker, I yield 15 minutes to the gentleman from Maine [Mr. NELSON]. I understand the other side has agreed to yield him 10 minutes.

Mr. PURNELL. If the gentleman desires, I will yield him 10 minutes now, or I will yield it if he requires the additional time later.

Mr. NELSON of Maine. Mr. Speaker and Members of the House, my attitude toward this measure is well expressed in the words of the condemned murderer who was led out on to the gallows and asked, before the black cap was drawn down over his eyes, if he had anything to say. He looked around at the hastily constructed scaffold, tested it with his weight, and said: "Yes; I have. I don't think this danged thing is safe." [Laughter.] That is the way I feel about this bill.

PRESENT TITLE A PERVERSION OF TERMS

To my mind, this act might well be entitled "A bill to commit legislative sabotage on the delicate mechanism of production and distribution that has already suffered too much from political experimentation." [Applause.]

ORGANIZED OPPOSITION

That I am not alone in this view is attested by the fact that such legislation is strenuously opposed by the American Federation of Labor, the National Grange, the proper department of the General Federation of Women's Clubs, perhaps the largest organization of women in the world; the American Farm Bureau, the National Retail Dry Goods Association, the National Retail Furniture Association, the National Retail Shoe Association, the Garment Retailers of America, the National Association of Retail Clothiers, the National Grocery Manufacturers' Association, by hundreds of trade organizations and chambers of commerce throughout the country, and by the inarticulate and unorganized millions constituting the consumers of this Nation, upon whom organized minorities, through threats of political reprisals, are daily laying new burdens.

CLASS LEGISLATION

It is foreign to the spirit of our legislative policies and against the tradition of our democracy for the Government of the United States to be placed in the position of extending economic protection to any particular business group, whether of manufacturers or distributors.

Mr. KELLY. Will the gentleman yield?

Mr. NELSON of Maine. Certainly.

Mr. KELLY. The effort of this measure is to take the Government's hand off of business, because a restriction has been placed on it.

Mr. NELSON of Maine. The gentleman may make that statement to the House when he gets his time. I do not

agree with the gentleman. I say this measure is the most unjust, uneconomic, and dangerous proposition that was ever brought before this House during my time. [Applause.]

This bill constitutes the most objectionable sort of class legislation. It is in the interest of the producer. It is of no substantial benefit to the retailer. It lays a tremendous burden on the consumer. The act proposes to give to the manufacturers of the country the privilege which Congress refused to the farmers of the Nation—that of fixing the selling price of their products. Under this act a manufacturer may affix a trade name to practically any article—to "any object of commerce," to the necessities of life, to flour, bread, meats, canned goods, cereals, crackers, to drugs and medicines, to clothing of all sorts, to plumbing and heating apparatus, to cement, gasoline, and building materials—and may then declare the uniform price at which the article may be sold the country over. This he may do with no governmental or other agency to determine whether the article is of standard or inferior quality, whether it possesses merit or lacks merit, whether it is in open competition or controlled by a monopoly, whether the price is fair or exorbitant. The manufacturer may sell the goods, receive full pay for them, and yet retain control over their disposition and selling price.

CONSTITUTES FUNDAMENTAL CHANGE IN EXISTING LAW

This act would legalize two things that are now, and always have been, illegal in this country; restriction on alienation and price fixing.

It has been uniformly held by our Supreme Court that restrictions on alienation, price fixing, and destruction of competition, such as that proposed by this bill, is injurious to the public interest, and contracts seeking to accomplish these ends have uniformly been held to be void. In legal recognition and enforcement of these principles stand the constitutions or statutes of some 30 States, the Sherman Act, the Clayton Act, and the Federal Trade Commission act.

NOT A RESTORATION OF FORMER RIGHTS

It is claimed by the proponents of this measure that the passage of this legislation will simply restore to the manufacturers rights of resale-price contract which they enjoyed previous to the passage of the Sherman Act. Such is not the case. There was never a legal recognition in this country by our Supreme Court of the right of an owner of a branded or trade-marked article, as such, to fix the resale price on the same. There were for a time erroneous decisions of the lower Federal courts, long since overruled, that the owner of a patented or copyrighted article, having a legal monopoly, might project that monopoly by fixing the price at which it should sell. But such is not the law at the present time. This act would give to any man who stamped an article with his trade name greater privileges than the law now gives to the owner of a patented or copyrighted article.

Mr. MERRITT. Will the gentleman yield?

Mr. NELSON of Maine. I yield.

Mr. MERRITT. We do not claim that what the gentleman says is not the decision of the Supreme Court, but what we do say is that the common law of England and the common law of this country, before the Supreme Court decision, was that a sale with a condition is legal. It is legal in England now and it always has been legal in England under the common law.

Mr. NELSON of Maine. We fought the Civil War to determine the proposition that the Supreme Court of the United States was the final authority in the interpretation of law in this country.

The Supreme Court in this celebrated Miles case declared that the restriction on alienation and price fixing involved in that case were invalid both at common law and under the act of Congress of July 2, 1890. In the Boston Store case, embodied in the report of your committee, it was contended that such restrictions on alienation were valid at common law, and so do not offend the Sherman Act. In that case the court said:

> There can be no doubt that the alleged price-fixing contract * * * was contrary to the general law and void.

The general law was the Sherman Act, and the Sherman Act was passed to preserve the common-law right of freedom of trade.

Mr. MERRITT. Is it not true that our claim is not that the Supreme Court did not decide the Boston Store case, as the gentleman says, but that it also said the common law of England as well as of this country applied?

Mr. NELSON of Maine. If the Supreme Court made a mistake, you can not blame me for it.

Mr. HUDDLESTON. Will the gentleman yield?

Mr. NELSON of Maine. Yes.

Mr. HUDDLESTON. Is it not true that as early as Coke's Commentaries on Littleton it was announced that under the common law there could be no such resale price fixing and that has always been the law.

Mr. NELSON of Maine. I have seen it so stated. Certainly such is the established law of the United States and has been from the beginning of our Government. It has always been the established law of this country that you can not place such restrictions as here contemplated on the alienation of personal property; that is, a man who owns personal property which he has bought and paid for can sell it to any person to whom he may desire to sell it at any price he sees fit.

ALLEGED EVILS AIMED AT

The alleged evil at which this bill is ostensibly aimed is that of predatory price cutting, uneconomic price cutting amounting to an unfair method of competition, but the bill goes further and seeks to do away with all price cutting in branded goods.

I want to say that this bill is all bad, even its title. The title of this bill is most misleading. I do not want to be facetious over a serious matter, but I could best characterize the title of this bill in the words of a French-Canadian farmer up in Aroostook County of my State, that great potato-raising section so ably represented by my colleague, Mr. SNOW. This man had bought some fertilizer to put on his potatoes. It did not analyze out according to the formula printed on the bag. He expressed the situation in these words: "She don't smell on the inside like she read on the label." [Laughter and applause.]

My friends, the title of this bill is most misleading. It reads, "To protect trade-mark owners, distributors, and the public against injurious and uneconomic practices in the distribution of articles of standard quality." With no governmental or other agency to determine anything about the quality, it is going to protect any article upon which a man simply stamps his name. Under the guise of preventing injurious and uneconomic practices you will find that it destroys competition of all kinds, not only injurious competition but beneficial competition, not only uneconomic but economic competition; that it seeks to do away with not only unfair methods of competition but with absolutely fair methods of competition.

Mr. MAPES. Will the gentleman yield?

Mr. NELSON of Maine. I will be glad to yield.

Mr. MAPES. Of course, this law does not apply to any trade-marked or branded articles unless they come in competition with other trade-marked or branded articles.

Mr. NELSON of Maine. Will the gentleman tell me who is going to determine that? Does not the gentleman know that the Federal Trade Commission in 1916 investigated this matter and made a report in which it said that a law such as this could not be passed with safety without some governmental agency having supervision?

Mr. MAPES. Could not the gentleman's answer be applied to any act which Congress passes?

Mr. NELSON of Maine. Very likely.

Mr. MAPES. The courts must interpret it.

Mr. NELSON of Maine. I want to say further that the Stevens bill, the original Kelly bill, and the bill put in by the gentleman from Pennsylvania [Mr. WYANT] all provided for some governmental or other agency to which general prices had to be submitted for approval, this agency also to pass on the fairness of the prices charged.

Mr. HUDDLESTON. Will the gentleman yield?

Mr. NELSON of Maine. Yes.

Mr. HUDDLESTON. Upon the question asked by the gentleman from Michigan [Mr. MAPES] the competition is with commodities of the same general class; that is to say, hats in competition with other hats and not in competition with the same kind of hats.

Mr. NELSON of Maine. I want to say that price cutting, as such, must be distinguished from predatory price cutting. Price cutting is practiced to-day all over the country by the most ethical and responsible dealers in all lines of goods, and I ask you to consider this.

Price cutting is the only method by which the economies of increased purchasing power, superior organization, greater efficiency and decreased operating costs may be distributed to the consuming public. When you say here in a bill that you will stop all competition in these branded articles, you are putting a premium on inefficiency; you are destroying all opportunity for the development of more efficient and cheaper methods of distribution; you are destroying the liberties of commerce and the rights of the consuming public of the United States.

Predatory price cutting on the other hand constitutes so infinitesimal a proportion of the total sales of identified goods that it is practically negligible. It is but a sporadic symptom of the keenness of commercial competition, an inevitable result of a particular method of distribution—that of high-powered advertising—and does not warrant legislative interference with the accepted economic and legal theories of centuries. There are evils in all forms of competitive effort which, if specifically forbidden by law, would emasculate all our commercial and professional activities.

Mr. KELLY. Will the gentleman yield for one question?

Mr. NELSON of Maine. Yes.

Mr. KELLY. The gentleman talks about raising prices; it is our contention that this power, as has been shown by the automobile industry, will mean lower prices.

Mr. NELSON of Maine. In the automobile industry the automobiles are sold through agencies, and they are the private property of the men who sell them. You do not want to contend in the House of Representatives that a man who owns property can not do what he pleases with it in the matter of the sale price. I do not want to discuss that, however, because it does not touch the principles involved in this bill in the remotest respect. [Applause.] Any man who has any conception of the laws of political economy will understand that that is an entirely different question from the one we are considering here.

REASONS ADVANCED FOR LEGISLATION

Before we reverse a conception of public policy as old as our Government, before we seek to change the entire economic structure of our merchandising system, and lightly set aside the social and economic principles under which we have prospered as no other people have ever before prospered, let us carefully consider the reasons put forward for this legislation. The two main ones are these:

First. Because some retail dealers advertise and sell certain trade-marked articles at an extremely low price, thus, it is claimed, injuring the good will and business of the manufacturer.

Second. Because, mirabile dictu, the passage of this act will put an end to this cut-price competition and place the small local dealer on a competitive basis with the great chain store and other combinations.

Simply stating these propositions proclaims their absurdity.

MANUFACTURER NEEDS NO ADDITIONAL PROTECTION

So far as this first claim is concerned—that the manufacturer needs protection for the good will inherent in the article which he manufactures and advertises—even a cursory reading of the hearings on a similar bill will convince any disinterested person that these cut-price sales, indulged in by less than 1 per cent of the dealers—sales which advertise the merits of the article and increase the number of its users—are not materially impairing the good will or business of the manufacturer. On the contrary, it will show that a representative group of these companies dealing in trademarked and nationally advertised articles have severally capitalized their so-called good will at from $1,000,000 to $57,000,000, upon which fictitious values the American public are paying dividends. A characteristic example cited was that of the company handling Listerine. It was shown that in the course of a reorganization of this concern, while its tangible assets were $1,000,000, its good will was capitalized on the basis of $20,000,000. No general impairment of the large profits of these concerns was shown. Yet it is to protect these enormous items of good will and these tremendous profits which need no protection that we are asked to reverse our conception of public interest, to revoke the common law of State and Nation, partially to repeal the Sherman Act, the Clayton Act, and the provisions of the Federal Trade Commission, to run counter to the public policy and police laws of the various States, and to remove the only protection that the consumer now has against monopoly and restraint of trade, namely, competition in the field of distribution. Such protection is comparable to taking the shirt off the back of a small boy in a winter's storm to wrap it around the neck of a strong man in a fur coat.

A MANUFACTURER'S BILL

This is a manufacturer's bill. It was with this class that the movement originated back in the early eighties. It has been this class, down through the years, that has persistently sought, by subtle methods and devious devices, to circumvent the law and attain their ends, always to be stopped by those guardians of the people's rights—the courts. These manufacturers are now demanding through legislation what our Supreme Court has uniformly held to be against public interest, and this in the face of the fact that they are prospering enormously under the present system.

RETAILER NOT BENEFITED

No hearings have ever been held on this particular measure, thus giving notice to the country of its provisions. This is not the original Capper-Kelly bill which your retailers asked you to support. The only provision in that original measure in the interests of the retailer and in the interests of a uniform retail selling price has been cut out. That was the clause providing that the wholesaler, purchasing under a price-fixing contract from the manufacturer, should require any dealer to whom he might resell the commodity to agree in turn not to resell except at a stipulated price. This was the part of the bill designed to secure uniformity of selling terms among retailers and to prevent price cutting. It is not in this measure. The legislation had hard going. It was loaded down too heavily. Something had to be jettisoned to prevent its foundering. So the manufacturer, with his usual magnanimity, threw the retailer overboard. If this legislation passes, the retailer, too late, will find himself, not a Noah on an ark that is to save him from the flood of chain-store competition, but will find himself a Jonah in the belly of a whale. [Applause and laughter.]

Mr. O'CONNOR of Oklahoma. Will the gentleman yield?

Mr. NELSON of Maine. Yes.

Mr. O'CONNOR of Oklahoma. It seems to me they are seeking here to give the person who does not know how to shop the same protection and the same chance as some one who does know how to shop. Of course, we can not create intelligence. Your Maine potato raiser used fertilizer on his potatoes, we use gravy in our country. [Laughter.]

The SPEAKER. The time of the gentleman from Maine has expired.

Mr. NELSON of Maine. Will the gentleman yield me more time?

Mr. PURNELL. Let me ask the gentleman from Maine if he can get along with five minutes?

Mr. NELSON of Maine. I can not do it and say what I have in mind. I have not yet come to what I really wanted to say.

Mr. PURNELL. I promised to yield the gentleman more time, and I therefore yield the gentleman nine minutes.

Mr. BANKHEAD. Will the gentleman yield before he proceeds?

Mr. NELSON of Maine. Yes.

Mr. BANKHEAD. There are a great many of us on this side who would like to hear the gentleman discuss the effect this bill will have upon the chain-store competition system as against the interests of the independent merchants. We would like for the gentleman to discuss that phase of the matter.

Mr. NELSON of Wisconsin. Will the gentleman yield?

Mr. NELSON of Maine. I do not want to yield any further, simply because I have not the time.

FEDERAL JURISDICTION: ITS LIMITATIONS

Answering the question suggested by the gentleman, the proponents of this measure seem to feel they can properly and effectively invoke Federal legislation to correct the evils they are complaining of here. They want to invoke such legislation, although it runs contrary to the public policy and the public interest of this country as set forth in every decision of our courts from the earliest days. They want to invoke it, although it runs contrary to State law and Federal law. By specious propaganda or otherwise the retail druggists of this country have been led to believe that we here in Congress can pass a price-fixing law that will apply both to intrastate and to interstate contracts and will be uniformly effective throughout the Nation.

Now, we know that this is not true. The power of Congress to legislate in these matters, if it exists at all, exists under the commerce clause of the Constitution. We can legislate only as regards interstate contracts. Unless this law is to displace and override the public policy and the laws of the various States properly enacted in the exercise of their police power, this bill is futile and inept. Of what use is this bill, applying simply to interstate contracts if, in addition to the common law of the States against restriction on alienation, the majority of those States by constitution or by statute have passed laws against the formation of combinations in restraint of trade, in restraint of alienation of property, or in restraint of the destruction of competition, and in restraint of price fixing?

If a manufacturer in New York sells to a wholesaler in New York, that is an intrastate contract, and this law does not apply. If price-fixing contracts come under the condemnation of the laws of New York, no price-fixing contract can be entered into. The chain stores can obtain all the goods they want for cut-price purposes. If a manufacturer in New York, on the other hand, sells to a wholesaler in Ohio, that is an interstate contract. This law would apply and the wholesaler in Ohio would be obliged to sell those goods to every retailer at the same price. The retailer in Ohio loses his opportunity to get certain discounts and is obliged to pay a uniform price, but if the State law or the constitution of Ohio—and I believe it is true in the case of that State—has a prohibition against price-fixing contracts, then no price-fixing contracts can be made with the retailers, and in that case the bill is absolutely of no service to the retailer who is looking to see the establishment of uniform retail prices.

Why pass a law that must depend for its efficacy and uniformity upon the improbable condition of a change in the public policy, constitutions, and laws of the individual States?

MASS DISTRIBUTION A NATURAL COROLLARY TO MASS PRODUCTION

We live in an age of mass production and cheapened manufacturing costs which should be reflected in cheaper prices to the consumer, but the gains in production have been lost in wasteful and inefficient distribution. We live in a land of plenty, yet many lack the necessities of life. The cost of distribution has been practically equal to that of production. The spread between producer and consumer is unduly wide. Retail price maintenance means a freezing or widening of that spread. Without competition among distributors there can be no hope of increased efficiency or of reduced costs of distribution.

If ever the benefits of mass production are to be passed on to the people, they can be passed on only by the development of more efficient and cheaper methods of distribution. [Applause.]

Heretofore distribution has lagged behind production, but gradually new and more efficient distribution outlets have come into being—the department store, the mail-order house, the chain store, each bringing hardship to established business, yet each being economically sound and a natural step in our economic development toward mass distribution—toward the saving to the public of the gains of mass production. The growth of the chain store has been phenominal. Their continued expansion threatens the business life of the independent dealer, yet they are a natural corrollary to mass production. I hold no brief for the chain store. I am perhaps as interested in the retail dealers of my district as any man present in his. Most of them are my personal friends. But I deem it the better part of friendship to arouse them with the truth rather than seek, by legislative nostrum, to lull them into a sense of unwarranted security; and that truth is this—that the chain store succeeds because it is economically sound, because it is efficient, because through mass buying, analysis of freight routes, scientific merchandising, advertising, and accounting, it is able to reduce the spread between producer and consumer and sell more cheaply than its competitors, that sooner or later the independent retailer must meet the chain store on its own ground, that of mass buying and efficiency of operation. This, many retailers have already done, and are succeeding as never before. There is no legislative panacea for these economic ills, certainly not in the measure before us.

Pope was right years ago when he wrote the couplet:

> How few of all the ills that men endure
> The part that kings or laws can cause or cure.

NOT A CURE OF THE RETAILER'S ILLS

Certainly this bill before us is not a cure for the ills of the retailer. If the original bill contained such an ingredient, it has been left out of this concoction, which will simply exhilarate the manufacturer, who has no immediate need of a stimulant. So long as State constitutions and State laws remain as they are and the general prohibition of the Sherman law against combinations in restraint of trade continues, this law can not prevent price cutting, can not prevent the bootlegging of branded articles from States whose laws prevent price fixing, can not remove the advantages of mass buying and increased efficiency, and can not put the small dealer on a competitive basis with the chain store.

The passage of this act, on the contrary, would be a severe blow to the independent retailer. It would take from him his initiative and his independence. His stock, fully paid for, would no longer be his own, to dispose of as he might deem best or as the exigencies of business might require. Instead of continuing, as he should be, the purchasing agent of his community he would become the mere selling agent of numberless manufacturers of branded articles. The greater the proportion of branded articles he carries in stock the more susceptible he becomes to the competition of the chain store. The number of branded articles he would be compelled to carry would increase under this law, and his margin of profit would depend wholly upon the generosity of the producer. Advertising may create such a demand for certain articles that the retailer would be obliged to handle them, even though the prices fixed by the manufacturer allow him practically no profit.

FIXED PRICES MEAN HIGH PRICES

Fixed prices mean high prices. The manufacturer, given the right to fix the uniform resale price of his article, will place thereon a price that will be profitable under all market conditions and at whatever point of delivery. Although the branded article may be made up of variables, the price of which fluctuates from day to day, the law of supply and demand will be ignored and the consumer will receive no benefit from the lower market. The price fixed will be one that will show a profit under the worst market conditions and at the farthest point of delivery.

Not only will the branded articles sell at a higher price but inevitably the unbranded commodities, equivalent or comparable to the branded articles, would follow the upward price movement.

Under the present system the dealer who can operate more economically than his competitor can give the advantage of such savings to the public in reduced prices, and

in return receive from the public an increased patronage. Under the system here proposed, all reductions in price to the public must be made on unbranded goods. If the public is entitled to the savings from efficiency on unbranded goods, why not on the branded? The tendency would be for the dealers to promote the sale of branded goods on which the profit is fixed and in which there is no competition rather than on the equally meritorious unbranded goods, the price of which is kept down by competition.

If the sale of branded goods is to be emphasized by the retainer and all discounts are to be made on unbranded goods, the tendency will be for more and more producers to brand their goods and start on a campaign of national advertising. Hundreds of millions of dollars are now being spent in advertising, a great economic waste, which adds nothing to the intrinsic value of the article but simply adds to its price. The people pay the advertising bill in increased prices. This advertising, paid for by the people, is capitalized as good will and the people are again called upon to pay dividends on the capitalized good will which they themselves paid for. If this bill becomes law, the contest of the future among manufacturers will be a contest in advertising rather than one in price and quality. This bill, in its fixing of margins and profits, means the curtailment or absolute elimination among retailers of that individual initiative and competition upon which alone the consumer must rely for the development of new and more efficient methods of distribution. Again, one of two things would happen: Either the manufacturer would continue to give the chain store the usual discounts and rebates, in which case the chain store would retain its present advantage over the independent retailer, or the manufacturer would discontinue these discounts and put into his own pocket these immense sums which have heretofore been distributed to the consuming public in reduced prices. This bill removes competition from the field of distribution and renders it easy for the few large producers of like or comparable articles, by gentlemen's agreements, to remove competition from the field of production. Combination and monopolization will inevitably follow.

NO REGULATORY BODY

No Federal agency is created to protect the peoples' rights, to say whether a price is fair or unfair, or to declare whether or not there is free and open competition in like or comparable articles. In 1919 the Federal Trade Commission, after a careful study of the whole question of resale price maintenance, said that while "producers of identified goods should be protected in their intangible property right or good will * * * the unlimited power both to fix and enforce and maintain resale prices may not be made lawful with safety."

In its report issued over a year ago, it again calls attention to this danger. The original price fixing bill, the Stevens bill, 1920, the original Kelly bill, introduced in 1923, and the Wyant bill, provided for the filing of the prices with some governmental agency, such as the Federal Trade Commission. Such a provision in the public interest is entirely lacking in this measure. Is there not an obligation on our part, if the price-fixing privilege is extended to manufacturers, to see that the privilege is not abused?

Mr. COX. Will the gentleman yield?

Mr. NELSON of Maine. I yield.

Mr. COX. As to whether the bill has been well considered by the committee reporting it out, in view of the statement in the report of the committee that the effect of this bill is only to restate the common law, and the further statement that it must be kept in mind that it does not relate to the necessities of life and, therefore, will not increase the cost of living, will the gentleman say whether in view of those two, inaccuracies in regard to the statement of law and the other in regard to the statements of fact, what does the gentleman say?

Mr. NELSON of Maine. This bill certainly applies to all the necessities of life, and this legislation is sought simply because it is now offensive to both the common law and statute law of this country. The bill offends not only man-made law but the law of economics. You may change the Federal law but you can not change the economic law.

Mr. WILLIAM E. HULL. Will the gentleman yield?

Mr. NELSON of Maine. Yes.

Mr. WILLIAM E. HULL. Can the gentleman give us any remedy as to how we can stop the chain-store system?

Mr. NELSON of Maine. If this bill represents an effort to check predatory price cutting only, send it back to the committee for further consideration. Let them frame a law declaring predatory price cutting to be an unfair method of competition. The Federal Trade Commission is now authorized to deal with and prevent unfair methods of competition. Heretofore they could not declare predatory price cutting to be an unfair method, because of the decision in the Miles case, which held that a man had a right to sell his property at any price which pleased him.

Better to pass here a well-considered law applying to predatory price cutting alone than at this critical time in our industrial and economic life to stop all competition in branded merchandise, put a premium on inefficiency, stop the development of cheaper and more efficient distribution outlets, and throw a monkey wrench into that highly complex mechanism which is handling so successfully the thirty or forty billion dollar retail trade of the United States. [Applause.]

The SPEAKER. The time of the gentleman has expired.

Mr. BANKHEAD. Mr. Speaker, I yield five minutes to the gentleman from Mississippi [Mr. BUSBY].

Mr. BUSBY. Mr. Speaker and gentlemen of the House, it is not my purpose to throw any great light on the subject that we are discussing. My only purpose in taking this small amount of time is to call attention to the fact that this bill before the House is not the bill that came out of the Senate. That was pointed out very clearly by the gentleman from Maine [Mr. NELSON]. This is not the bill that you promised your people back home you would vote for. The bill that is before the House at this time is one which gives the manufacturer or the producer power to contract only with the retailer. It does not touch the wholesaler, and he does not enter into the picture in any form or manner whatever under the bill that is now being considered. I call attention to another phase of this matter. In 1929 the Federal Trade Commission issued a document which gives you much information upon the subject that we are considering. This document was issued after considerable investigation. One thing that impressed me was that wherever the question was referred to the manufacturer and the wholesaler—and the latter one is left out of the bill—as to whether if wholesale price-maintenance contracts were made legal the manufacturer should be permitted to give quantity discounts, 92 per cent of the manufacturers answered yes, that they should be given the opportunity under their contracts to give quantity discounts. Let us follow that and see what it means. In this city of Washington I am told that one concern buys nine carloads of a certain brand of tooth paste each year. That is not true of the independent man. The man who buys nine carloads of toothpaste receives a quantity discount so that he can buy it, say, for 19 cents a package. The resale price is 50 cents, so that in reselling it he would make 31 cents. Then we take the smaller man who can buy only 50 dozen items a year, and on that quantity he will be charged by the manufacturer a price of 32 cents a package; but he, too, is required to sell the same product for 50 cents. So that he would make a profit of 18 cents. Then there is a still smaller man who uses a smaller quantity, and he buys, say, five-dozen of these articles, and in buying them he has to pay 37 cents a package, and when he sells them for 50 cents he makes 13 cents. That is what quantity discount means. It means that the man who can buy only a small quantity of an article must sell it at the same price that the chain store sells it, regardless of what he has to pay. I have followed that idea through the investigation made by the

Federal Trade Commission, and quantity discount is the long suit of the manufacturer in dealing with the chain store. The manufacturer should be required to sell his product to all purchasers at the same price without regard to quantity.

The chain store is going to outbuy the independent merchant unless we require the manufacturer to sell at a uniform price and profit greatly out of proportion to the small merchant because the man who buys a carload of a small article, like toothpaste, and sells it for 50 cents, can get an entirely different profit from that made by the man who buys only four or five dozen of that same article and who has to sell it at the same price. I want to impress on you that one point, and I do not want you to overlook it when you come to think of the independent merchant selling an article for the same number of cents that the chain store sells an article. Require the manufacturer to sell to retailers who do a small business at the same price he sells to the big merchant and the chain store——

Mr. COX. Mr. Speaker, will the gentleman yield?

Mr. BUSBY. Yes.

Mr. COX. The report of the Federal Trade Commission from which the gentleman has quoted is a partial report of the general study that the commission was conducting of chain stores. The report is now in the hands of the commission, but has not been reviewed by it, and approximately $100,000 has been expended by the commission in making the report.

The SPEAKER. The time of the gentleman from Mississippi has expired.

Mr. BANKHEAD. Mr. Speaker, I yield five minutes to the gentleman from New York [Mr. CELLER].

Mr. CELLER. Mr. Speaker, there is no doubt that mass distribution as represented by the chain stores is a necessary corollary of mass production, but in the great growth of chain stores there have crept in many evils that are driving the independent out of business, and among these evils is the flagrant one of predatory price cutting. If anything is to be done by this bill, it will be to destroy predatory price cutting and give the independent, fearless merchant, the backbone of communities rural and urban, a chance for his white alley.

I do not believe that most Members of the House have a real appreciation of the tremendous growth and therefore the tremendous menace of the chain-store advance upon the well-being of independent merchants. There are to-day some 7,839 chain-store companies operating over 198,000 chain stores. To give you a comparison—in 1914 the total volume of sales of 2,030 chain stores did not exceed $1,000,000,000, whereas in 1930 the almost 200,000 retail chain stores sold in excess of over $15,000,000,000. Where will it end? When reduced to percentages the chains' have increased during the last 16 years about 400 per cent in number of parent companies, 800 per cent in number of store units, and 1,500 per cent in volume of business, as is pointed out in the second of the series of articles by M. M. Zimmerman in Printers' Ink (October 2, 1930):

These figures are the basic reasons why they are feared by many independent retailers, why they are accused in some quarters of monopolistic tendencies, why the Federal Trade Commission has been asked by the United States Senate to investigate them, why there are 51 bills in State legislatures waiting action either to curb their future growth or to put them out of business, and why some manufacturers and advertisers are fighting hard for their business while others hesitate and refuse to sell them. Summing it up, chain expansion created a mass buying power that no retailer or group of retailers ever enjoyed before. Unwise and unjudicious use of this power, coupled with the chains' resistance to become a part of the business and social life of the communities they served, precipitated the major problems that now confront them and those who do business with them.

But the greatest crime charged against the chains is the use of price cutting. And it is price cutting that the pending bill is aimed at.

I submit herewith some interesting chain-store data, showing the magnitude of chain-store growth:

Chain class	1914		1930[1]	
	Number of parent companies	Number of units	Number of parent companies	Number of units
Auto accessories	50	650	68	594
Auto tires			68	1,294
Bakeries	25	125	133	1,103
Books and stationery	1	100	32	450
Cigars and tobacco	250	2,500	66	3,386
Cleaners and dyers	45	400	146	884
Confectionery	40	315	126	1,014
Dairy products	40	550	19	155
Department and dry goods	30	250	844	8,777
Drug	200	1,400	647	5,102
Electrical	5	20	33	464
5 cents, 10 cents, and $1 variety	180	2,000	336	7,885
Florists	15	60	43	166
Furniture	16	100	159	904
Gasoline filling stations	5	2,000	808	71,552
General stores			305	1,909
Grocers	500	8,000	995	62,725
Hardware	15	80	187	913
Hats and caps	25	250	51	706
Hosiery			102	821
Hotels	10	100	154	1,114
Jewelers	50	200	56	2,325
Lumberyards	50	300	88	733
Meat markets	75	450	407	2,461
Men's furnishings	35	90	121	793
Men's clothing	50	600	387	3,575
Millinery	10	35	122	1,499
Paints and wall paper	5	15	32	311
Pianos and musical instruments	125	1,000	45	452
Radios			82	544
Restaurants and lunch rooms	100	1,400	324	3,913
Shoes	50	700	405	6,557
Sporting goods	3	53	12	126
Tailors			18	117
Women's ready-to-wear and furnishings	25	150	418	3,121
Total	2,030	23,893	7,839	198,145

[1] 1930 chain figures compiled by the Commercial Service Co., New York.

I venture the assertion, ladies and gentlemen, that unless some drastic economic changes occur by 1940 almost all the retail distribution will be in the hands of chain units, and very likely between fifty and seventy-five billion dollars' worth of business will be done in the chain stores. There has developed a tremendous public opinion among retailers and manufacturers the country over against the predatory price-cutting practices of chain stores, and this bill gives you at last an opportunity to register your protest against these practices.

The question has been asked, "What has predatory price cutting got to do with chain stores?" It has much to do with it. I venture the assertion that if 10 years ago you had adopted this legislation you would have scotched the growth of chain stores. If you want proof as to how the chain stores blossom and grow like weeds and destroy, let me read what was said by William J. Baxter, director of Chain Store Research Bureau, at a recent meeting of the National Association of Manufacturers:

To me there isn't any question as to the advisability of any retail store if it can sell some nationally known product at cost to get the crowd. * * * A consumer will go to a grocery store and she is willing to pay 55 cents for steak, whereas it might be sold for 52 or 50 cents elsewhere, if she at the same time can purchase Campbell's soups or some other package goods at cost. * * * Scientific retailing means studying the blind articles in the store and selling them at full prices. But what we call open articles, the ones that the consumer can go from store to store and compare, selling them at low prices.

And along that line let me read to you an advertisement which I culled from the press as emanating from one of the chain stores, as follows:

"Take Campbell's soups: Twenty-one kinds, known from coast to coast. In leading magazines and newspapers they are advertised at 15 cents a can, and worth it, too. Yet our price is only 12 cents a can, 3 cents lower than the advertised price. So on everything else."

Meaning, of course, that if you can buy the advertised brand like Campbell's soup in our store under the advertised price, under the well-known price, you therefore can buy everything else in our store under price.

To my mind, my good friends, that is deceptive advertising; but it is the kind of advertising that is being indulged in by a great many chain-store systems, and that is the kind of unfair competition that efficient independent merchants are constantly facing to their great detriment. They can not live under that kind of com-

petition, and that is why we have so many failures, to my mind, in the industries conducted by independent merchants.

Let me read you a statement of Mr. Justice Holmes in a dissenting opinion of Dr. Miles Medical Co. against John B. Parke & Sons, found in 220 United States 373:

"I can not believe that in the long run the public will profit by this court permitting knaves to cut reasonable prices for some ulterior purpose of their own and thus impair, if not destroy, the production and sale of articles which it is assumed to be desirable that the public should get."

Let me read you what John Wanamaker and what Mr. Bloomingdale, of Bloomingdale's department store, say with reference to price cutting. John Wanamaker said:

"I want to keep away from the store that tries to catch me with that kind of a fishhook. If they lose on one thing they will put it on something you don't know of. These are things purchasers don't know anything about."

And Mr. Bloomingdale has this to say about it:

"Such price cutting is an evil—it is an abuse—it is in a class with false advertising. It gives no advantage to the public because the loss is made up on other goods. While some stores submit to the practice because it is so prevalent, others make it their chief policy and use it to mislead the public into the belief that by cutting the price on a few trade-marked articles, the same policy prevails on all other merchandise in the store."

The chain store, knowing the psychology of the consumer, deliberately deals in this deception. They deal in these so-called loss leaders, whereby they sell under cost and undersell the retailer to attract the crowds who believe that all the goods in the store may be purchased just as cheaply. [Applause.]

The name of Maj. Benjamin H. Namm, president of the Namm Store, of Brooklyn, N. Y., has been drawn into this debate. He has been severely criticized for his espousal of opposition to this bill. Major Namm needs no defense by me. He is a very distinguished citizen of Brooklyn, a major during the World War, and a leader in civic and communal matters in our State. Although I disagree with him in general on this bill, I challenge anyone to impugn his motives or assail his integrity of purpose. He represents the National Retail Dry Goods Association, and at his request I intend in due time to introduce an amendment to this bill. This amendment is as follows:

That the Federal Trade Commission may, of its own initiative, or upon a petition in writing by a citizen, filed with such commission, fix and establish a fair and reasonable price at which any article coming under the terms of this act shall be sold, and shall for that purpose have access to all records, books, papers, accounts, secret processes, and formulas of the proprietor, manufacturer, or producer of such article which said commission shall deem necessary in order to enable it to fix and establish such price; that a price once fixed and established shall not be raised or increased without the authority of the commission so to do.

I am not in thorough sympathy with this amendment, but shall nevertheless offer it for whatever it may be worth. Its effect will be to prevent undue profits to the manufacturer and prevent unreasonable conditions being imposed upon the retailers. If the manufacturers want protection, they must give protection. Give the manufacturers the right to be free of the restraints of the Sherman Act, give them the right to maintain prices; but the manufacturers in turn must submit to the necessity of charging reasonable and fair prices.

Competition undoubtedly will force manufacturers of the same or similar goods, even if prices are maintained, to keep prices down. A manufacturer does not need to avail himself of this act, but if he does he must submit to its restraint. He must give and take. It is now a 1-way street for him.

Only in this way will the public be protected, on the one hand from the avarice of the exacting manufacturer, and on the other hand from the predatory price-cutting chain-store operators.

Major Namm sent broadcast the following:

A REFUTATION

Public statements have been made that England has gone in for price fixing. These statements are now refuted by the following letter:

SELFRIDGE & CO. (LTD.),
London, July 8, 1930.

B. H. NAMM, Esq.,
President the Namm Store, Brooklyn, N. Y.

DEAR MR. NAMM: I hasten to answer your letter of June 25 and to say that the price-fixing legislation was proposed here before Parliament, but it was an unpopular measure and was dropped. We have nothing of the kind here, and I hardly think that even the socialistic government will undertake to press for it.

If I were a merchant in America at the moment, I should fight with all my strength against anything of the kind being introduced into America. The less interference with business on the part of governments the better.

Yours very truly,

H. GORDON SELFRIDGE.

The Namm Store is opposed to price fixing because it will raise the cost of living and eliminate competition among retailers.

We ask the shopping public of Brooklyn to join us in this fight for price freedom.

August 20, 1930.

B. H. NAMM,
President the Namm Store, Brooklyn, N. Y.

A Representative from Maryland, in the RECORD of Friday, January 23, 1931, extended his remarks to take Major Namm to task for his statement concerning the practice in England. While it is true that Major Namm properly quoted Mr. Gordon Selfridge to the effect that price-fixing legislation in England was frowned upon by the Parliament, yet the major failed to call attention to the fact that there is the right of full freedom of contract, and that under the common law the manufacturer can couple with the sale to the retailer or distributor the proviso that the goods covered by the sale shall not be sold here under a certain price.

Mr. Selfridge very properly admits, in the letter sent by him under date of November 10, 1930, to Dr. Crighton Clarke, of the New York bar, that—

Of course, if a manufacturer makes a product and sells it only with the understanding that it be sold at a certain price, he has an entire right to do this, and we, as the distributors, may buy or not of these articles as we choose. Such a contract can be enforced between the producer and the one to whom he sells, and it is not an unfair demand, because if the distributor is not willing to maintain that contract he need not buy the merchandise.

I was interested in this controversy and requested the legislative reference service of the Library of Congress to look into this matter of price-fixing legislation in England. The following data were prepared for me by Miss Lottie M. Manross, of the legislative reference service staff:

PRICE-FIXING LEGISLATION IN ENGLAND

A Government bill, No. 177, called the consumers' council bill, was introduced into the House of Commons on April 30, 1930. Its purpose was: "To provide for the constitution of a consumers' council; to define the powers and duties of that council; to enable the board of trade to regulate by order the prices to be charged for certain commodities, and the charges to be made in respect of sales thereof; and for purposes connected with the matters aforesaid."

In moving the second reading on May 8, Mr. Graham, president of the board of trade, who had presented the bill, explained that the object of the bill was to put the consumers' council on a statutory basis; to set it up as a permanent body to discharge the duties of review and investigation which were recommended by the royal commission in 1925; to endow it with compulsory powers to obtain information; and to fix the prices to be charged for certain staple articles of food. The rejection of the measure was moved on the ground that it created an arbitrary and bureaucratic power to fix prices over a wide and indefinite range of commodities, the effect of which must be detrimental to the interests of producers and consumers alike. After further debate it was referred to a standing committee. (Ross's Parliamentary Record, to July 25, inclusive, first session of Thirty-fifth Parliament, House of Commons, p. 31.)

The council of the Drapers' Chamber of Trade passed a resolution on May 20 expressing the opinion that the present position with regard to fixing minimum prices for proprietary goods was satisfactory, and that any legislative interference would be detrimental to the interests both of the public and the trader. (Gleanings and Memoranda, July, 1930, p. 79.)

The Wolverhampton Chamber of Commerce, May 20, passed a resolution strongly opposing the bill. Protest was expressed also at the annual meeting of the National Association of British and Irish Millers. (Gleanings and Memoranda, July, 1930, p. 79.)

The bill was debated in committee for several days between June 3 and 26, during which time many Conservative amendments to restrict the scope of the measure were discussed and defeated, and at the end of the period very little had been accomplished. On June 26 it was decided to submit a special report to the Commons in the following terms: "That the committee consider that, owing to the late period of the session and the impossibility of giving adequate consideration to the consumers' council bill in the time at their disposal, they can not with advantage proceed further with the bill." (Gleanings and Memoranda, August, 1930, p. 178.)

Before it was announced that the bill was to be dropped other protests against the bill were made. At the annual meeting of Messrs. J. Lyons & Co. (Ltd.), London, June 24, the chairman said the bill ignored the experience gained from similar experiments throughout history: First, that a maximum price became a minimum price, irrespective of quality and service; and, secondly, that the standard which was adopted in fixing a price was

that of the less and not of the more efficient. (Gleanings and Memoranda, August, 1930, p. 178.)

Objection was raised also by the National Federation of Meat Traders' Associations, September 29: "As a trade we can not agree to be placed under the control of a body of seven persons who are to be legally empowered to fix prices. The difficulties confronting us at the present time are many and grave. They would be insurmountable were we required to conduct our business under the instructions of a body of amateurs, however well intentioned." (Gleanings and Memoranda, November, 1930, p. 441.)

The chairman of the thirty-fourth international exhibition in connection with the grocery and allied trades, September 20, said: "We have built up the prosperity of our country on individual efforts, and we are not going to sit down and see those individual efforts done away with by the substitution of a socialistic system." (Gleanings and Memoranda, November, 1930, p. 441.)

A consumers' council bill, No. 48, was again introduced on November 13, but has not yet been acted upon. (Ross's Parliamentary Record, to December 5, inclusive, second session of the Thirty-fifth Parliament, House of Commons, p. 5.)

Apparently attempts have been made in England to pass a bill very much like the Capper-Kelly bill which was turned down. It was, however, quite unnecessary to pass such a bill in England, as the right to maintain prices under the common law has always existed and still exists. Were it not for our Sherman anti-trust law and the Federal trade commission act, the common-law right to do this very thing in this country would exist. This bill restates the principle of the common law. It restores the liberty of contract, so far as the Sherman Act and the Federal trade commission act interfere with that liberty.

On the general question permit me to quote from an article entitled "Cutthroat Prices: The Competition That Kills," by Justice Louis D. Brandeis, which appeared in Harper's Weekly in 1913. Mr. Brandeis was then a member of the Boston bar:

The Supreme Court says that a contract by which a producer binds a retailer to maintain the established selling price of his trade-marked product is void; because it prevents competition between retailers of the article and restrains trade.

Such a contract does, in a way, limit competition; but no man is bound to compete with himself. And when the same trade-marked article is sold in the same market by one dealer at a less price than by another, the producer in effect competes with himself. To avoid such competition the producer of a trade-marked article often sells it to but a single dealer in a city or town; or he establishes an exclusive sales agency. No one has questioned the legal right of an independent producer to create such exclusive outlets for his product. But if exclusive selling agencies are legal, why should the individual manufacturer of a trade-marked article be prevented from establishing a marketing system under which his several agencies for distribution will sell at the same price? There is no difference, in substance, between an agent who retails the article and a dealer who retails it.

For many business concerns the policy of maintaining a standard price for a standard article is simple. The village baker readily maintained the quality and price of his product by sale and delivery over his own counter. The great Standard Oil monopoly maintains quality and price (when it desires so to do) by selling throughout the world to the individual customer from its own tank wagons. But for most producers the jobber and the retailer are the necessary means of distribution, as necessary as the railroad, the express, or the parcel post. The Standard Oil Co. can, without entering into contracts with dealers, maintain the price through its dominant power. Shall the law discriminate against the lesser concerns which have not that power, and deny them the legal right to contract with dealers to accomplish a like result? For in order to insure to the small producer the ability to maintain the price of his product, the law must afford him contract protection when he deals through the middleman.

But the Supreme Court says that a contract which prevents a dealer of trade-marked articles from cutting the established selling price, restrains trade. In a sense, every contract restrains trade; for after one has entered into a contract, he is not as free in trading as he was before he bound himself. But the right to bind oneself is essential to trade development. And it is not every contract in restraint of trade, but only contracts unreasonably in restraint of trade, which are invalid. Whether a contract does unreasonably restrain trade is not to be determined by abstract reasoning. Facts only can be safely relied upon to teach us whether a trade practice is consistent with the general welfare. An abundant experience establishes that the one-price system, which marks so important an advance in the ethics of trade, has also greatly increased the efficiency of merchandising, not only for the producer but for the dealer and consumer as well. * * *

The evil results of price cutting are far reaching. It is sometimes urged that price cutting of a trade-marked article injures no one; that the producer is not injured, since he received his full price in the original sale to jobber or retailer, and, indeed, may be benefited by increased sales, since lower prices ordinarily stimulate trade; that the retailer can not be harmed, since he has cut the price voluntarily to advance his own interests; that the consumer is surely benefited because he gets the article cheaper. But this reasoning is most superficial and misleading.

To sell a dollar Ingersoll watch for 67 cents injures both the manufacturer and the regular dealer because it tends to make the public believe that either the manufacturer's or the dealer's profits are ordinarily exorbitant; or, in other words, that the watch is not worth a dollar. Such a cut necessarily impairs the reputation of the article and by impairing reputation lessens the demand. It may even destroy the manufacturer's market. A few conspicuous "cut-price sales" in any market will demoralize the trade of the regular dealers in that article. They can not sell it at cut prices without losing money. They might be able to sell a few of the articles at the established price; but they would do so at the risk of their own reputations. The cut, by others, if known, would create the impression on their own customers of having been overcharged. It is better policy for the regular dealer to drop the line altogether. On the other hand, the demand for the article from the irregular dealer who cuts the price is short-lived. The cut-price article can not long remain his "leader." His use for it is sporadic and temporary. One "leader" is soon discarded for another. Then the cut-price outlet is closed to the producer, and meanwhile the regular trade has been lost. Thus a single prominent price cutter can ruin a market for both the producer and the regular dealer. And the loss to the retailer is serious.

On the other hand, the customer's gain from price cutting is only sporadic and temporary. The few who buy a standard article for less than its value do benefit, unless they have, at the same time, been misled into buying some other article at more than its value. But the public generally is the loser; and the losses are often permanent. If the price cutting is not stayed, and the manufacturer reduces the price to his regular customers in order to enable them to retain their market, he is tempted to deteriorate the article in order to preserve his own profits. If the manufacturer can not or will not reduce his price to the dealer, and the regular retailers abandon the line, the consumer suffers at least the inconvenience of not being able to buy the article.

The independent producer of an article which bears his name or trade-mark, be he manufacturer or grower, seeks no special privilege when he makes contracts to prevent retailers from cutting his established selling price. The producer says in effect: "That which I create, in which I embody my experience, to which I give my reputation, is my property. By my own effort I have created a product valuable not only to myself, but to the consumer; for I have endowed this specific article with qualities which the consumer desires, and which the consumer should be able to rely confidently upon receiving when he purchases my article in the original package. To be able to buy my article with the assurance that it possesses the desired qualities is quite as much of value to the consumer who purchases it as it is of value to the maker who is seeking to find customers for it. It is essential that the consumer should have confidence not only in the quality of my product, but in the fairness of the price he pays. And to accomplish a proper and adequate distribution of product guaranteed both as to quality and price, I must provide by contract against the retail price being cut."

The position of the independent producer who establishes the price at which his own trade-marked article shall be sold to the consumer must not be confused with that of a combination or trust which, controlling the market, fixes the price of a staple article. The independent producer is engaged in a business open to competition. He establishes his price at his peril—the peril that if he sets it too high either the consumer will not buy or, if the article is nevertheless popular, the high profits will invite even more competition. The consumer who pays the price established by an independent producer in a competitive line of business does so voluntarily; he pays the price asked because he deems the article worth that price as compared with the cost of other competing articles. But when a trust fixes, through its monopoly power, the price of a staple article in common use, the consumer does not pay the price voluntarily. He pays under compulsion. There being no competitor, he must pay the price fixed by the trust or be deprived of the use of the article.

The SPEAKER. The time of the gentleman from New York has expired.

Mr. PURNELL. Mr. Speaker, I yield one-half minute to the gentleman from Connecticut [Mr. MERRITT].

Mr. MERRITT. Mr. Speaker, it is quite evident there is great interest in this subject. I hope the Members of the House will remember that this is a vote on the rule, and whatever side they may wish to vote for be sure to adopt the rule, so that the matter may be fully discussed and settled. It has been pending in this House for years, and this is the day in which to settle it.

Mr. PURNELL. Mr. Speaker, I move the previous question.

The previous question was ordered.

The SPEAKER. The question is on agreeing to the resolution.

The question was taken; and on a division (demanded by Mr. PARKS) there were ayes 147 and noes 58.

So the resolution was agreed to.

Mr. PURNELL. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 11) to protect trade-mark owners, distributors, and the public against injurious and uneconomic practices in the distribution of articles of standard quality under a distinguishing trade-mark, brand, or name.

The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill H. R. 11, with Mr. LEHLBACH in the chair.

The Clerk read the title of the bill.

Mr. PARKER. Mr. Chairman, I ask unanimous consent that the first reading of the bill be dispensed with.

The CHAIRMAN. Is there objection to the request of the gentleman from New York [Mr. PARKER]?

There was no objection.

Mr. PARKER. Mr. Chairman, the gentleman from Texas [Mr. RAYBURN] and I will each control one hour under the rule. Does the gentleman from Texas intend to recognize the proponents and opponents of the bill.

Mr. RAYBURN. I had intended to, but I have had no applicatiton for time from anyone in favor of the bill.

Mr. PARKER. I simply wanted to be fair. If the gentleman is going to divide his time, I will divide our time.

Mr. RAYBURN. All of my time has been spoken for, and it has been promised to those who are opposed to the bill, because those are the only applications for time I have had.

Mr. PARKER. Then I am to understand that the time which will be yielded by the gentleman from Texas will be yielded to Members who are opposed to the bill?

Mr. RAYBURN. Yes. And I am yielding to gentlemen on both sides of the aisle.

Mr. PARKS. Will the gentleman yield?

Mr. PARKER. I yield.

Mr. PARKS. May I inquire of the chairman if he proposes to yield time to those who are favorable to the bill?

Mr. PARKER. Yes. Certainly.

Mr. PARKS. The gentleman from New York [Mr. PARKER] then is in favor of the bill?

Mr. PARKER. I am not.

Mr. PARKS. The ranking Member on the Democratic side is not in favor of the bill?

Mr. PARKER No, sir.

Mr. PARKS. How did this bill get in here if nobody is in favor of it?

Mr. PARKER. It came here by a vote of 12 to 9, I may tell the gentleman.

Mr. BURTNESS. Will the gentleman yield?

Mr. PARKER. I yield.

Mr. BURTNESS. There are some of us who will vote for or against this bill depending upon the exact form it takes when consideration has been finally completed in the committee, depending upon whether or not certain amendments are adopted. In that case to whom are we to address our requests for time?

Mr. PARKER. Oh, I assume the gentleman would get time under the 5-minute rule. That is where the amendments will come in.

Mr. BURTNESS. But I have some general ideas about this legislation.

Mr. PARKER. I think the gentleman will get plenty of time under the 5-minute rule. The time allotted is limited, and the gentleman can secure time under the 5-minute rule.

Mr. LAGUARDIA. Will the gentleman yield?

Mr. PARKER. I yield.

Mr. LAGUARDIA. I know, of course, that the gentleman will be fair in the division of time. There is no question about that, but inasmuch as the chairman and the ranking minority Member are both opposed to it, would it not be a good idea to put the allotment of time in the hands of one who is in favor of the bill?

Mr. PARKER. I am following the rule strictly.

Mr. LAGUARDIA. I know that.

Mr. PARKER. I think the gentleman will find that time will be allotted in a perfectly fair way, and we can not now change the rule.

Mr. Chairman, I yield 10 minutes to the gentleman from Connecticut [Mr. MERRITT]. [Applause.]

Mr. MERRITT. Mr. Chairman, the fact that this bill is before the House is, I think, proof that it has substantial merit. I say this because the favorable report by the Committee on Interstate and Foreign Commerce has been the result of a consideration lasting over a long period of years and long and exhaustive hearings and, still more, of a nation-wide discussion of this question which has been most thorough and often bitter. The leaders in the discussion have been manufacturers of branded and trade-marked articles who have built up a nation-wide trade by producing a standard article of high quality and by national advertising. By these means a national demand for the article was created and the sale of the article by the retailer to the consumer was made easy. The result is that the trade-mark or brand of the manufacturer, by reason of the quality of the goods and their national reputation, becomes a most valuable asset and is entitled to protection like any other property.

The most serious attacks on such property have been by department stores and chain stores, which have often advertised these nationally known products at prices at or below cost in order to bring customers into their stores so that they could then sell other goods at unduly high prices. A result of such tactics has been that legitimate dealers in the trade-marked articles could not continue to handle them in competition and therefore ceased to purchase such articles from the manufacturer. The main object of this bill is to stop, as far as possible, such unfair and predatory price cutting.

The opponents of the legislation both in and out of Congress have sought to prejudice the whole bill by referring to it as a price fixing bill. That designation is entirely misleading and erroneous.

The price of any article is, in each sale, determined by the manufacturer, but for any period of time there can be no fixed price for any article sold in competition. The bill provides that it shall not apply to any articles which are not in fair and open competition, and therefore all the manufacturers who operate or will operate under this bill are obliged to fix their prices in open competition. It is clear that in the course of trade these prices must vary according to changing costs in manufacture and changing conditions in competition. If any manufacturer has his price lists too high he will immediately begin to lose his trade to some other competing manufacturer who will try to take away his trade by lowering the price.

Looking at the matter as fairly as I can, I see nothing in the bill to interfere in any way with legitimate competition and regulation of prices thereby. It is claimed that prices to the consumer will be raised. On the contrary, if the bill, as is hoped, will prevent or interfere with predatory price cutting, the effect will be that the small dealer can buy with more confidence and in greater quantity than now, when he is never sure that the local chain store will not, for some advertising purpose, cut the bottom out of the price for these special goods so that he would have to sell at a loss if at all. Under the more stable conditions, with the smaller dealers buying with greater confidence, the manufacturer will not only be able to increase his output, and thus reduce cost, but he will be able to sell to the dealers on a lower margin so that their price to the consumer will be no greater than before, and will tend to become less.

It will be noted that the bill especially provides that it shall not apply to contracts or agreements between producers or between wholesalers or between retailers as to resale prices; that is to say, no combination as between dealers in the same class to uphold prices is legalized.

As stated in the report, all that this bill does is to restore an old common-law right which was practically taken away by the Sherman Antitrust Act.

Gentlemen have argued that the bill is objectionable because it will change or at least modify the law as laid down in various cases by the Supreme Court, and especially because the court, in the Boston Store case, held that the view of the common law stated by our colleague, Mr. BECK, in his argument before the court was not correct.

It is not for me to question or even argue a point of law. The committee in its majority report has, however, quoted what seems to me unquestioned basis for the correctness of Mr. BECK's contention as to the common law, and I may quote from an address delivered by an eminent member of the New York bar, Charles Wesley Dunn, before the Associated Grocery Manufacturers of America, which association, as I understand it, he now represents, and he has also been active recently in opposing this bill on various economic grounds. I mention this to show merely that what he said in that address was not because he favored this bill. With regard to the contention that under the common law a contract of sale which contained a condition as to resale was valid, the court, in the Miles case, held that Mr. BECK's contention was wrong. In Mr. Dunn's address, where he refers to the Miles case, he says:

> But I should add here that I concur in Mr. BECK's contention. Resale price contracts of the kind have been sustained under the English common law; and, if I recall rightly, there is no recorded English common-law case in which such a contract has been held invalid. This discussion, however, is academic, in view of the Miles and Boston Store decisions. Moreover, as Justice Brandeis pointed out in the latter case, whether a manufacturer should be permitted contractually to fix a resale price for his product, and, if so, under what conditions, is an economic question, one for Congress to decide on that basis.

What is desired, therefore, as the committee has stated in its report, is simply to restore the ancient common-law right which was at least very much interfered with by the Sherman antitrust law.

It has been argued by some of our colleagues here that this would show disregard for the Supreme Court, but you will note that Mr. Justice Brandeis pointed out that whether a resale contract is or should be legal, and if so, under what conditions, is an economic question and one for Congress to decide on that basis.

The committee believes that as an economic question, under existing conditions of trade which affect articles of nation-wide demand and nation-wide sale, the manufacturer who in the first place produces an article of such quality and at such price that there is a national demand for it, is fairly entitled to sell this article to a customer with a proviso that that particular customer shall not resell it below or above a certain price. This House has recently passed a most important and valuable bill to protect copyright, both copyright in designs and copyright in books and works of art. One of the abuses that first attracted public attention, and which this bill is intended to prevent, was the advertising of cut prices on books by department stores, so that the regular book sellers could not afford to handle them, and the sale and circulation of these books was therefore much interfered with, to the detriment of the author and his royalties. As was said in the discussion of the copyright bill, it would seem that the products of a man's own brain are entitled to the fullest protection, especially during the relatively short life of a copyright. And the same principle applies to other articles.

The interests which are opposing this bill are not so altruistic as they endeavor to appear. These interests are those which advertise cut prices primarily for what they think is their own present interest. The manufacturer, however, if he is a sound business man, when he fixes prices, is not alone concerned with a profit on the particular transaction, but on selling at a price which will be fair to himself and to the consumer, and which will be such that the consumer will continue to find it of advantage to purchase the goods and thus make a steady demand for them. But, more than this, a manufacturer is bound by his own self-interest, which is unquestionably the interest of the public, to keep up the quality of his goods so that the customers will be satisfied and desire, on account of the quality, to continue their purchase.

The unfortunate and disastrous tendency of predatory price cutting is to induce the production of goods simply to meet a price, without regard to quality. It needs no argument to show that this tendency is not and can not be for the best interests of the public. The competition which this bill is intended to promote is fair competition, where demand will depend both on quality and on price. It has been shown, and the bill specially declares, that it shall not apply to any articles which are not in fair and open competition, and we appeal to the House to insure this fair and open competition by supporting the bill. [Applause.]

Mr. PATMAN. Will the gentleman yield?

Mr. MERRITT. Yes.

Mr. PATMAN. I notice the bill provides that purchasers shall receive the same terms and the same price. That appeals to me very much, but I do not see anything in the bill which compels the manufacturer to sell to people in any particular city who want to purchase. In other words, suppose a chain store and an independent store carry on business in the same town; the chain store is purchasing from a manufacturer, and suppose the independent store wants to make a purchase. Can the manufacturer refuse to sell to that independent?

Mr. MERRITT. Yes; I think so.

Mr. LAGUARDIA. Will the gentleman yield?

Mr. MERRITT. Yes.

Mr. LAGUARDIA. There are two or three things which are troubling me in connection with this bill. Let us say that a cannery is putting up a standard product and cans that product especially for a chain store. Does this bill prevent a reduction in price on that product?

Mr. MERRITT. I should think not, unless that cannery sells the product with a contract as to resale price.

Mr. LAGUARDIA. Without mentioning any brand, suppose there is such a thing as the Mountain Brand sold to the A B C chain stores; they contract for 1,000,000 cans of Mountain Brand, the labels are like the brand, and then at the bottom in small print are the words "Canned especially for the A B C chain stores." Can they sell those goods at any price they want to?

Mr. MAPES. The gentleman from Connecticut will remember that it is purely optional with the producer and the buyer as to whether or not they make any contract at all. It is purely a voluntary matter, and the contract is entered into between the manufacturer and the retailer.

Mr. LAGUARDIA. Then is not the supposititious case I have presented almost inevitable?

Mr. MAPES. As I understand the gentleman's question, there would be nothing to prevent it at all.

Mr. KELLY. Of course, if the manufacturer uses this resale-price agreement, he is doing it for the purpose of protecting his trade-mark or brand, and he would not enter into such practice as the gentleman has referred to.

The CHAIRMAN. The time of the gentleman from Connecticut has expired.

Mr. RAYBURN. Mr. Chairman, I yield 20 minutes to the gentleman from Ohio [Mr. CROSSER].

Mr. COX. Mr. Chairman, this is a very important matter that is being discussed by the committee, and I make the point of no quorum, although I regret to do it.

The CHAIRMAN (Mr. LEHLBACH). The gentleman from Georgia makes the point of order that no quorum is present. The Chair will count. [After counting.] One hundred and twenty-two gentlemen present, a quorum.

Mr. CROSSER. Mr. Chairman, in discussing this Capper-Kelly price fixing bill I shall not indulge in personalities nor question anyone's motives. I shall discuss the measure on the basis of principle.

I have given most careful consideration to this price fixing bill and listened patiently to the arguments presented on both sides of the proposition and have read the literature presented on the subject and have given particu-

lar attention to the literature in support of the bill. Everyone should, of course, desire, by his vote on the bill, to do what is best for the country.

The Capper-Kelly bill proposes to give the producer of a commodity bearing the label, brand, trade-mark, or trade name of such producer legal authority to fix a price below which the commodity can not be sold.

The Supreme Court of the United States, in the case of Dr. Miles Medicine Co. against Jno. D. Parks Sons Co., reported in Two hundred and twentieth United States Reports, declared that such an attempt to fix the retail price of goods is a violation of the antitrust law and is, according to our common law, contrary to public policy. The court said:

> Contracts between a manufacturer and all dealers whom he permits to sell his products * * * which fix the price for all sales, whether at wholesale or retail, operate as a restraint of trade, unlawful both at common law and as to interstate commerce under the antitrust act of July 2, 1930.

It is for the purpose of nullifying these provisions of the antitrust law and to destroy the effect of the Supreme Court's decision the Capper-Kelly price fixing bill has been proposed as law.

The passage of this bill, which would make it possible to fix a price on goods below which they can not be sold to the public, would be unwise for many reasons, some of which I shall state.

If this bill were to be made law, the retail price below which they could not be sold could, in regard to almost every kind of merchandise, be fixed by the producer, because practically all kinds of goods can be trade-marked or stamped, and according to the terms of this bill, this is all that is needed to make it lawful to fix and keep up the prices on them. This would not only be opposed to the welfare of the general public, the consumers, but would also be against the best interests of the retailer.

The laws against trusts and also the common law of America and England are based upon the principle that freedom of competition is for the best interest of the public.

Freedom of competition means that anyone may offer to sell his goods on terms which he believes will cause them to be bought by those desiring to purchase such goods.

This principle has, in the past, generally prevented the public from being compelled to pay a price higher than is necessary to provide a reasonable profit to the producer of goods.

If the terms of this bill should be given full effect, it would, according to its supporters, make it unlawful for one storekeeper or merchant to sell goods, marked or tagged by a producer, for less than the price fixed or dictated by the producer to all storekeepers in the same community, and below which price they dare not sell. If this bill were to become law, practically everything used in the home would be sold at a price fixed by the producer. It would then be perfectly useless and in fact foolish for a buyer, who might wish to buy any common brand of goods, to go even a block past the store nearest his home to buy them. The buyer would know that it would be impossible to buy them at any store for even a cent less than he would pay to the store nearest his residence.

The storekeeper could not hope to attract customers who might live outside his immediate neighborhood because he could not offer a better price for the same goods. If he could not offer a better price, why should the customer bother to go to his store? The customer, in fact, would lose by going past the nearest storekeeper for what he might want, because he would be uselessly wearing out shoe leather. That would make the storekeeper a mere order taker for the manufacturer, because the price the storekeeper must pay to the manufacturer would be fixed and so also would be fixed the price at which he would be compelled to sell the goods. He could not in any way increase his percentage of profit on goods on which the price had thus been fixed. He could get only the orders that might come to him without inducement.

If this bill were to become law, the storekeeper could not increase his trade by offering to the public a better price. As I have said, the storekeeper will be in reality an order taker, a mere agent, for the producer. The producer, however, would not have the responsibility, either to the storekeeper or to the consuming public, that he would have if he were to sell his goods through agents. If the producer were to sell through agents and if such agents were to lose money in trying to sell the goods, it would be the manufacturer's money and not the agents' money which would be lost.

Under this proposed price fixing law, however, the producer could as positively dictate the price at which his goods should be sold as if he were selling the goods through one of his own agents for whom, in the scope of his employment, he would be responsible. In other words, this bill would enable the producer to say at what price the retailer must sell the producer's goods, in a certain neighborhood, without the risk by the producer of losing money in operating the store.

If this bill were to become law and price fixing were to be put into effect as fully as the bill permits, it would be useless for a storekeeper to publish any kind of advertisement to increase his business. What could one store say in newspaper or even handbill advertising that would cause people to buy at that store rather than at some other store? The producer having fixed or dictated the same price for his goods at all stores in the same neighborhood, one store could not say anything in advertisement to attract customers that its neighbors could not also say. There would be no use, no sense, in publishing expensive advertisements because the storekeeper, in his advertisement, could not offer any special inducement to buy from him. Woodward & Lothrop in Washington or the May Co. in Cleveland would no longer be able to pay thousands of dollars weekly to the daily papers for advertisements telling of attractive prices, for, under this bill, their goods would be for sale at a price exactly the same as that charged by their neighbors. About all that could be said in an advertisement would be: "Come to our store, we have nicer show cases and more attractive clerks." [Laughter.]

General price fixing would be unjust and unfair to the retail storekeeper for another reason, explained as follows:

When, for a considerable time, the storekeeper shall have continued to sell to his customers price-fixed goods, the producer could and would say, "That storekeeper's customers have acquired the habit of buying my goods and so that storekeeper must sell my goods or lose some customers. I shall therefore continue in force the same retail price but I will charge the retail storekeeper more for the goods. He can do with a smaller profit and still live and that will enable me to make a larger profit." Is that not what the producer would naturally do when he knows that the retailer shall have created a demand for the producer's goods? The producer would be encouraged to do this by the knowledge of the fact that practically the only advertising which would be done would be in the magazines of national circulation. Remember that there would be no reason why the dealer should advertise in local papers, because all his prices would be the same as that of other dealers.

Let me call your attention to another injustice which the retailer would suffer if the retail price of his goods were fixed according to this proposed law. The retailer might be hard pressed for money and yet have plenty of goods, which, in order to get cash, he might desire to sell at a sacrifice, even at less than cost if need be, to save himself from embarrassing court proceedings. Who does not know of storekeepers who, during the present hard times, have been able to save themselves from business ruin by selling part of their stock for less than it may have cost them? It was fortunate that they could do so, for it enabled them to procure cash to pay off the pressing claims. If the proposed law had been in force, however, the storekeeper could not have sold part of his stock at reduced prices in order to get money he needed. Many merchants have large stocks of goods but little or no money. If they can sell part of their goods, even at a sacrifice, they can often get enough money to meet the pressing obligations, but this proposed law would not allow them to sell their goods below the price fixed by the producer.

"But," shout the advocates of price fixing, "what about chain stores; this would fix them." My friends, the proposed law would no more prevent development of the chain system than would a baseball effect the movements of the earth.

It is one of the tricks of special pleaders to shout loudly about something that is unpopular and then propose the substitution of what the special pleader suggests, although it might have no effect upon the evil about which he shouts, and might even make the trouble worse.

The price fixing bill, if it were enacted into law, would not interfere in the least with chain stores. The supporters of the bill agree, of course, that under the proposed law the producer would very properly give to retailers, on orders for large quantities, a price lower than that for small quantities. The only restriction upon the producer's right to make such a lower price, on the sale of large quantities, is that everybody in the same community shall be entitled to as good a price if they buy in as large quantities.

Any large chain system could buy, from a producer of goods, in quantities many times greater than the merchant with one store. The chain store's profit would therefore be much greater; and if necessary to attract business the chain store could offer to sell at less than the usual profit some of the goods the retail price of which, the advocates of this bill assure us, would not be fixed in price. The customer then being in the chain store to buy the goods which had not been trade-marked and not price-fixed, would then buy what he would need of the goods the price of which would have been fixed under the terms of this law. Then since the chain store, because of its larger purchase, would have bought at a lower price than that given the small dealer the goods upon which the retail price has been fixed, the chain store would necessarily make a larger profit.

If the chain store were to sell at the retail price fixed for the small store, clearly the chain store would make a larger profit on the same goods.

I wish to call attention, however, to a fact which has apparently been overlooked by those who have discussed the bill. The language in the bill which gives the producer the right to sell the retailer larger quantities of his goods at a lower price than that charged for smaller quantities, gives the producer the right also to fix a different retail price. The only restriction upon the producer, as to the fixing of a retail price, is the same restriction that is placed upon the producer as to the price he can charge the dealer. That restriction is that the producer must grant equal terms.

As I have already said, it has been stated by both supporters and opponents of the measure that under the bill the producer could sell large quantities to dealers at a lower price than he might charge for smaller quantities. The language in the bill which makes this possible will be found on page 4, lines 17 to 20, inclusive. It is that "all purchasers from the vendor for resale at retail in the same city * * * where the vendee is to resell the commodity shall be granted equal terms as to purchase and resale prices."

Now, if that language authorizes the producer to sell to dealers larger quantities of goods at prices lower than is charged for smaller quantities, it surely also authorizes him to fix a lower resale price for those buying large quantities. For example, a producer may sell to a dealer 100,000 packages of goods at 3 cents less per package than he would charge for the goods when ordered in quantities of 200 packages or less. The only condition placed upon him is that he must sell on equal terms to any other person buying the same quantity. If, however, the producer could, under the language of the bill, sell a large quantity at a lower price than the price charged for smaller quantities, he certainly could also stipulate to the buyer of the larger quantity a lower resale or retail price.

If a dealer should buy 100,000 packages of goods, the producer could sell to the retail dealer at a lower price and also stipulate to such retailer a lower resale price than that stipulated to the small buyer. He would always be required, however, by the proposed law to grant equal terms to any other dealer in the same city who should buy the same quantity; that is to say, that in order to "grant equal terms" the producer would be required to fix the same retail price for all dealers in the same city who purchased the same quantity of goods. Whether or not terms are equal depends upon the equality of quantity purchased as well as anything else. If the language, "shall be granted equal terms as to purchase and retail prices," authorizes the making of lower prices to dealers who buy larger quantities, then surely it follows that the producer can fix a lower resale or retail price so long as he fixes a like resale price to those who buy from him like quantities. Note the language carefully. It is, "Shall be granted equal terms as to purchase and resale price." The whole transaction must be considered in order to determine whether or not all the terms to two or more dealers are equal.

Another serious objection to the bill from the standpoint of both retail dealer and consumer is the fact that if the cost of production becomes less, the retailer whose retail prices shall have been fixed by the producer could not sell to the consumer at a price which would meet the lower price possible on some substitute because of reduced cost of production. The dealer who may have stocked up heavily with certain goods while production costs were high must bear the loss resulting from lack of demand for the price-fixed goods.

It has been said, however, in support of the bill that the automobile industry practices price fixing. Even if true, that would not make it right; but let us consider the claim for a moment. The automobile manufacturers, like others, may advertise a fixed price, but everybody who has ever had any experience knows that the used car accepted as part of the purchase price enables the dealer to lower the price of the new car sufficiently to induce the prospective purchaser to buy. Even the unusual person who happens not to have a used car is advised by his friends and even confidentially told by salesmen to procure, before beginning negotiations for the purchase of a new car, an old car in any condition. Producers can at present, of course, sell their own goods to the public at any price they see fit, whether uniform or not. There are, of course, certain manufacturers who sell their cars through their own agents only. That simply means that the owner of the automobile can and does sell on any terms that suits him. The agent is just a man who works for the owner or manufacturer. The owner, therefore, can fix prices, reduce prices, raise prices, or do as he likes with his property.

Let us now consider what would be the effect of the proposed law upon the consumers. It certainly should require no argument to show that price fixing would seriously injure them. Price fixing practiced generally would mean that there would be no more competition. Without competition the producer of an article would not care whether or not the price he might charge were unreasonable to the buyer.

The fact that all now can offer to sell goods to the consuming public at terms they think will bring a profit, yet low enough to get business, is what enables consumers to buy at fairly reasonable prices. If a producer at present tries to charge the people too much, his rival gets the business. If you do away with competition, however, consumers will be subject to the arbitrary will of the producer, who then becomes in effect a monopolist. The public could then be compelled to pay whatever the producer might decide to charge for goods. There would be no relief from the producer's high prices if he could by law compel the retailer to keep up such high prices.

We see, then, that this bill would not in fact help the retailer. On the contrary, it would injure him. The request of the big manufacturer to the retailer that he urge the passage of this price fixing bill is like asking the retailer to put a noose around his neck while leaving the end of the rope in the hands of the producer, who could then tighten the noose on the retailer's neck whenever he might desire to do so.

The bill, as we have seen, also is certainly not for the benefit of the consumer, for it would give the producer practically all the power of monopoly without being subject to

price control by the Government in the interest of the consumer.

Great emphasis is placed by supporters of the bill on the fact that the bill gives only freedom to contract. Do they mean to say that men should have the right to make whatever contracts they desire to make? Surely they know that the right to contract to commit a crime would not be tolerated for a moment. The antitrust laws were passed to prevent people from having the freedom to make contracts that would interfere with trade.

The whole question at issue is whether or not the law should allow persons to make contracts that restrain trade.

It is interesting to note that those who are urging the bill to help the producer were not willing to have the Federal Trade Commission given power to investigate the cost of production of goods in order to decide whether or not the price to be fixed for retail might be fair.

Both Samuel Gompers, when he was president of the American Federation of Labor, and also William Green, who is now president of the American Federation of Labor, expressed disapproval of the Capper-Kelly price fixing bill. Mr. Green said:

> We believe the provision of this proposed legislation is contrary to sound public policy and is not in the interest of the great mass of the people.

The American Farm Bureau, through Chester Gray, its representative, expressed opposition to the bill.

When the general public once learns that such a law is even contemplated, much less enacted, there will be aroused a storm of indignation such as we have seldom seen. It is true, as was said by Thomas Carlyle, that history is red with the blood of the unorganized. In this case, however, the people have not organized only because they were not aware of what has been going on. There has, however, been unmistakable evidence of indignation at some of the tactics adopted to establish a price-fixing policy for the United States. [Applause.]

Mr. MERRITT. Mr. Chairman, I yield five minutes to the gentleman from Maryland [Mr. CLARK].

Mr. CLARK of Maryland. Mr. Chairman, when the Supreme Court construed the Sherman Act of 1890 as a restraint upon price maintenance or resale-price fixing, immediately an advantage was given to the big, wealthy producers of this country, and the small, struggling producers were placed at a tremendous disadvantage. Wealthy producers could resort to the establishment of agencies throughout the country, or they could resort to the system of consignment. The small, struggling industries or producers of the country could not, and from that day to this big business has been fighting to retain this advantage, and the struggle has gone on unabated.

I have been amused at some of the things that have been said here indicating that there is no such thing as resale-price fixing to-day. The big, wealthy producers of this country to-day are engaging in resale-price fixing through their agencies and through the consignment system, and have been since the Miles case of 1911. Is it hurting anyone?

Mr. COX. Is it good or bad?

Mr. CLARK of Maryland. It is good—absolutely good.

I point you to the automobile industry. To-day we have competition among the producers of automobiles and not among the retailers, which is better for the consuming public. You can to-day go into the automobile market, where price fixing by agency contract obtains, and buy an automobile under most favorable conditions.

Mr. BURTNESS. Will the gentleman yield?

Mr. CLARK of Maryland. Not just now.

Gentlemen, the independent community grocer only asks for equality of opportunity. He is at a disadvantage in the unfair competition to which he is subjected through the chain-store system. All these men are asking Congress for is to remove them from the restraint of the Sherman antitrust law. The courts of this country 21 years after the Sherman Act was passed said that the Sherman Act restrained resale-price fixing. The small producers and independent retailers are to-day asking Congress to take its hands off this subject and restore to them the freedom of contract which they had always enjoyed up until 1911.

Mr. Chairman, the real purpose of this bill is not to make law but to unmake it; not to intervene in business by restraint but to remove restraint.

The fundamental and controlling phase of this subject of manufacturer's price maintenance must be understood in order to vote intelligently on this bill. This bill does not impose a governmental restraint, as we find in most police legislation, but rather it seeks to remove an unnecessary and unwise restraint upon business that the antitrust laws never intended.

This bill, therefore, does not represent an attempt at governmental interference in business or governmental price fixing, or the making of substantive law in the true sense. In its final analysis, it simply seeks to remove a restraint found in the law by the courts which was never intended and which restraint by court interpretation should be removed and the long-enjoyed merchandising right of price maintenance by agreement be restored.

What brings this bill before us is that the Supreme Court has said that the Sherman antitrust law of 1890 prohibits manufacturers making price-maintenance agreements with their vendees, without excepting trade-marked and identified products.

In order, therefore, to properly study the merits of this bill we should ask ourselves this question, namely, Did Congress mean that the Sherman Act should have such application?

If Congress so intended, and we are still of the same opinion, we should vote against the bill. If we think Congress did not so intend, then we should vote for the bill.

I am willing to share the responsibility of showing that Congress did not intend and could not reasonably have intended to strike down this merchandising and price-stabilizing right so long enjoyed by such manufacturers and producers in this country.

Now, Mr. Speaker, was this the intention of the Sherman Act? How can we say such was the intent of this law if it took 21 years for the intent to manifest itself and then only by accident? The Sherman Act was passed in 1890. The practice of maintaining prices by agreement by those manufacturers or producers putting out trade-marked, branded, and nationally advertised merchandise continued up until 1911, when the Doctor Miles case was decided by the Supreme Court. This case was brought by Doctor Miles against the Parke-Davis Co. for violation of a resale-price agreement. So that so far as the protection of the consumers is concerned, which was the purpose of the Sherman Act, even after this long stretch of 21 years, it was only accidentally found out that the law applied to such agreements for the protection of the general public.

Again, to show that it was not the intent of the Sherman Act to destroy the custom of resale-price maintenance upon branded merchandise no need for such legislation or protection for anyone against such custom was shown then, nor could it be shown now.

The consumers can not possibly be injured by this custom unless their bargaining power is destroyed by it. Some Members have said on this floor that this bill will destroy consumer bargaining power. If this were so, I would oppose the bill. If the consumer does not want to pay the maintained or list price of any article, he can turn to other merchandise of the same general class in any store, because the bill only applies to competitive merchandise. Under these circumstances the producer or manufacturer takes all the chances in maintaining his prices.

No one claimed in 1890, nor could one claim now, that the exercise of this merchandising right resulted in monopoly of production or distribution. No one then said, nor could one now truthfully say, that Government price fixing is involved in this bill. This talk of monopoly and price fixing is mere misleading propaganda.

To show that the Sherman Act was not intended to prohibit under any and all circumstances the making and maintenance of resale-price lists by agreement we must

look also at the result since the Sherman law was applied by the Supreme Court to such agreements. The result shows such application to be unwise and unfortunate. Since the Miles case, cutthroat price baiting has grown to an alarming degree. Fraud upon the public by price cutting of widely advertised merchandise has increased from year to year. Small manufacturers and producers have been subjected to an inequality of opportunity which disenables them to stand up against big business that is able to maintain prices right down to the consumer through their factory agents or the assignment system.

One very important result of the law as it now stands, the independent retail stores are barely hanging on and many of them are failing because of unfair and fraudulent price cutting by the chain stores. This is a direct loss to the poor people of the community who are annually subject to seasonal layoffs and must rely upon credit at the local community grocery for provisions to sustain life itself over the layoff periods. There is not a Member of this House who does not know what a wonderful advantage and help this extension of credit by the independent store means to the poor people such as the wage earners and mechanics of the country. We all know the chain stores conduct a strictly cash-and-carry business. They extend credit to none.

What is going to happen to millions of workers in this country when they can no longer obtain food during their seasonal layoffs? We have recently heard much about the lending of money for the purchase of food. Let me remind you that the independent community grocer is lending tens of millions every years to the hard-working poor of this country in extending them food credits during the no-work period. Who is to fill this great need of credit if the independent community grocery store is to pass into history?

What better example of legally sanctioned price maintenance do you want to-day, even with respect to unidentified agricultural products, than the creation of stabilization corporations to actually take products off the market in order to do what? To maintain or stabilize prices. Why do we actually advocate the limitation of production to normal consumption, or supply to normal demand? Is it not to maintain or stabilize prices?

Now, what is the purpose of this character of price maintenance anyway? Price stabilization is a more expressive and more modern term. The purpose is to enable the producer to get his production costs plus a fair return plus a reasonable margin for his risk and possible losses, certainly when the public is protected against unfairness of price by the factor of competition. Until 1911, we always recognized and protected such price stabilization as a right of the producer of branded and identified merchandise, and we should remove the accidental restraint against it.

Right here I would like to quote a paragraph from the brief of one of the distinguished Members of this House in the Boston Store case of 1918, which case is often referred to in the discussions of this subject. Mr. BECK, a distinguished lawyer and now Member here from the State of Pennsylvania, said:

> In determining this question the court must recognize there is a wide variety of circumstances under which such restrictions are imposed. The article may be a necessity of life, or, as in the case at bar, a mere luxury. It may be sold under competitive conditions, or, as in the Miles case, under noncompetitive conditions. To prevent misconstruction we do not concede that public policy should solely regard the interest of the consumer. Nevertheless, the consumer, when necessaries of life are involved, must be a matter of first and cheap consideration. Public policy must take into consideration the retailer, the distributor, and especially the producer, for if the producer can not economically produce the consumer must suffer deprivation of the product. Where competitive conditions exist the inevitable working of economic laws protects the consumer.

The court divided in this case in applying the rule in the Miles case but pointed out that congressional action would be necessary to exempt the plaintiff from the operation of the Sherman Act.

Now, Mr. Speaker, what need has been shown for such restriction or for the application of the Sherman law to business contemplated in this bill? Remember, we are not making a law in this bill; we are partly unmaking one. We are taking from the law an interpretative application of the Supreme Court. Legislative bodies are frequently called upon to do this when the courts give their enactments interpretations not intended. This is a corrective measure, whether the Sherman Act was or was not intended to apply to such price-maintenance cases.

But I ask again, What need has been shown for the Sherman law in the restraint of competitive price maintenance? None at all. Did anyone ever ask for it? Who are contending for the restraint to-day? Chiefly the wealthy chain stores that want to continue their baiting and scalping and predatory price cutting, not to benefit the consumer but to mislead and defraud him and injure the independent retailer.

The antitrust laws are made to protect. Who has asked for protection against competitive price maintenance? The law cases on the subject chiefly represent a struggle on the part of the producer to shake off the Sherman law. The decisions are academic, almost pragmatic; but they are the law. No need of consumer protection has ever been shown. I have examined all the reasons against this bill coming to me through the mail and advanced in this House and have read the Federal Trade Commission's report of its investigation of the subject as well as the leading court cases cited, but I am still unconvinced that the restoration of this old merchandising custom can be harmful to anyone, including the consumer, certainly when it is limited, as in this bill, to competitive products. On the other hand, I can clearly see harm to the producer, and I think to the retailer, in continuing this restraint.

This bill will not kill chain stores nor price cutting. They are here to stay, but it will protect the producer and make the distributor and retailer fear to yield to dishonest methods.

Let the chain stores fight it out with the producers and retailers. Let the Government take its hands off. It is an economic matter involving competitive trade only. There is no need shown for governmental interference or the restraints of the antitrust laws. I am going to vote for the bill.

Mr. PARKER. Mr. Chairman, I yield five minutes to the gentleman from Indiana [Mr. HOGG].

Mr. HOGG of Indiana. Mr. Chairman, ladies, and gentlemen, we have gone far from the issue in this legislation. In my own district, as in every district throughout the Nation, the independent retailer is daily being put out of business by the unfair business methods of certain huge chain-store corporations.

Some time ago, in Fort Wayne, Ind., several hundred business men, having discussed price maintenance at length, decided to invite to debate before them a proponent and an opponent of this bill. Naturally, they invited the gentleman from Pennsylvania [Mr. KELLY]. As the opponent of the legislation they invited Mr. Lew Hahn, of New York, now president of the Lew Hahn Chain Stores System, operating from New York to California.

These gentlemen presented their views at length to 500 business executives at the Quest Club in Fort Wayne. Mr. Hahn's views were based on the assertion that the legislation would work an unfair hardship on the retailers.

I want to assert now that we ought not to enact a law for the benefit of the retailers alone, or for chain stores, but for 120,000,000 consumers in America who have the right to be represented in this legislation. [Applause.]

And so the retailers of Fort Wayne responded to the challenge of Mr. Lew Hahn and called a mass meeting of the retailers and of the consumers in favor of this legislation.

Now, I want to ask you how many people do you think would assemble voluntarily in defense of the price-cutting methods of certain chain-store companies? Not 200 people would assemble in any county in the Union for such a purpose. Yet, in Fort Wayne, more than 10,000 people assembled to hear Congressman KELLY and voiced their desire and need for the benefits of this legislation.

I have received telegrams from numerous organizations and individuals in my district asking that this body give

earnest consideration to this legislation to prevent unfair price cutting.

Hear this telegram from an independent merchant who has seen the chain stores absorb many independent retailers:

FORT WAYNE, IND., *January 26, 1931.*

Congressman DAVID HOGG,
Washington, D. C.:

I am voicing the sentiments of 340 independent merchants who are members of our local association in urging passage of Kelly price maintenance bill. The welfare of these individual business men has been dangerously impaired by price cutting on nationally advertised merchandise practiced by huge corporations who have special labeled, unidentified merchandise to offer the gullible public once they are enticed into their places of business on which they make up the loss incurred by selling the nationally advertised items as loss leaders. This practice has confused the consumers to the extent that they are unable to determine values and therefore do not know the fair price to pay for merchandise. Allowed to continue, this practice will inevitably ruin thousands of independent business men. We therefore urge that your honorable body will see fit to pass Kelly price maintenance bill, which we believe will eliminate injurious trade practices.

J. EUGENE HUNSBERGER,
Secretary United Independent Merchants' Bureau (Inc.).

An independent drug company says:

FORT WAYNE, IND., *January 27, 1931.*

Hon. DAVID HOGG:

In the interest of honest business we implore you to get behind the Capper-Kelly bill coming up to-day.

DREIER DRUG CO.

An independent grocery wires me as follows:

FORT WAYNE, IND., *January 27, 1931.*

Congressman DAVID HOGG:

There is great need for passage of Capper-Kelly bill to prevent frequent demoralization of markets which increases cost of living to consumer under present conditions.

REDDING GROCERY CO.

Here is another from an independent packer:

FORT WAYNE, IND., *January 27, 1931.*

Congressman DAVID HOGG:

At present resale prices are protected by vast consignment or agency or branch-store systems, all of which are cumbersome and expensive to operate. The consumer pays the bill. The Capper-Kelly proposal would provide a system of maintaining resale prices by inexpensive contracts. Competition between producers who are marketing their products, either branded or unbranded, by the inexpensive form of contracts rather than by expensive agency or consignment devices would bring down costs to the public. Such a system would permit lower prices to the consumer by reduction of cost through more uniform stable production by encouraging mass production, by elimination of the extra margin of profit necessary to guard against frequent demoralization of markets, which is the inevitable result of price wars under present conditions. We urge passage of Capper price maintenance bill.

FRED ECKART PACKING CO.,
MARSHALL COMINCAVISH.

FORT WAYNE, IND., *January 27, 1931.*

Congressman DAVID HOGG:

Please vote for passage of Kelly price maintenance bill to prevent price-juggling racket. Consuming public unable to determine fair values under present conditions and are being swindled on their food purchases daily.

EIPPER'S GROCERY.

FORT WAYNE, IND., *January 27, 1931.*

Congressman DAVID HOGG:

I solicit your honorable body to pass Kelly price maintenance bill, which will prevent misleading, deceptive advertising methods being used by chain systems to drive individual merchants out of business, and also prevent unnecessary confusion of values in the consumer's mind.

BRUNSON'S I. G. A. STORE,
ROY F. BRUNSON.

FORT WAYNE, IND., *January 27, 1931.*

Congressman DAVID HOGG:

To prevent unfair price manipulation on standard advertised merchandise, we urge passage of Capper-Kelly price maintenance bill, which will enable consumers to know value of merchandise and prevent unscrupulous concerns from using known brands as bait to sell unknown brands.

LOOS GROCERY CO.
H. F. PERRIQUEY.

FORT WAYNE, IND., *January 27, 1931.*

Congressman DAVID HOGG:

For benefit of all concerned, we favor passage of Kelly price maintenance bill.

KAYSER'S GROCERY CO.
ALVIN KAYSER.

FORT WAYNE, IND., *January 27, 1931.*

Hon. DAVID HOGG,
House of Representatives:

We appreciate your effort in interest of Capper-Kelly bill and hope it will become a law.

W. C. GERDING, *Drugs.*

FORT WAYNE, IND., *January 27, 1931.*

Hon. DAVID HOGG,
House of Representatives:

To preserve the future existence of the independent merchant use your influence in interest of Capper-Kelly bill.

JNO. C. WENZLER, *Druggist.*

FORT WAYNE, IND., *January 28, 1931.*

Congressman DAVID HOGG,
House Office Building, Washington, D. C.:

Your support of the Capper-Kelly bill will be appreciated.

A. L. KLEIN, *Main Pharmacy.*

GARRETT, IND., *January 27, 1931.*

Hon. DAVID HOGG,
House of Representatives, Washington, D. C.:

As president Indiana Retail Grocers and Meat Dealers Association I urge you to encourage and support the Capper-Kelly bill. Because it protects consumer, guarantees fair margin profit to merchant who is the backbone of prosperity in every community. It will tend to eliminate many sharp practices now participated in by foreign operators.

O. C. CLARK.

FORT WAYNE, IND., *January 27, 1931.*

Hon. DAVID HOGG,
Washington, D. C.:

Have thoroughly studied contents price maintenance bill and urge its passage. Our business seriously injured by unfair price juggling on nationally advertised items. Our customers are unable to determine fair value under present conditions. Passage of this bill will lower cost of living considerably and enable consumers to properly determine values.

JOHN HEINE.

CHICAGO, ILL., *January 27, 1931.*

Hon. DAVID HOGG,
House Office Building, Washington, D. C.:

We as grocerymen strongly urge passage Kelly price-maintenance bill; not for mercenary reasons but because absolute necessity such regulation if the independent merchant is to be kept in business. If we want elimination of such merchant, then nothing should be done to help him. We want him retained and urge passage of the bill.

A. H. PERFECT & CO.

These men know whereof they speak. The independent dealers throughout the Nation need the benefits of this legislation. [Applause.]

Mr. RAYBURN. Mr. Chairman, I yield to the gentleman from South Carolina [Mr. FULMER].

Mr. FULMER. Mr. Chairman and gentlemen of the committee, having been engaged in the mercantile business practically all of my life up until I came to Congress, I had the opportunity of coming in contact with jobbers, wholesalers, and manufacturers, as well as consumers. Therefore I would like very much to have the privilege of discussing this bill here this afternoon. I find, however, that I am unable to secure the time, as the time for debate has been so limited that even members of the committee reporting the bill can not secure sufficient time to discuss the bill to any extent.

Inasmuch as the Federal Trade Commission is now making an investigation on this subject that will give some very important information, I am hoping that the bill will be recommitted to the committee for further consideration. The Federal Trade Commission is spending thousands of dollars in making a thorough investigation, and I believe at this time it would be best on the part of the House to have the benefits of the report that will be made by this commission.

Mr. RAYBURN. Mr. Chairman, I yield 10 minutes to the gentleman from North Dakota [Mr. BURTNESS].

Mr. BURTNESS. Mr. Chairman and gentlemen of the committee, I suppose there is not a person on the floor of the House who would not like, if he found it possible to do so, if his conscience permitted it, to vote for a bill of this sort, that has undoubtedly been requested by a great many of

the local merchants, particularly the druggists in his own district.

I expect to propose at least one and possibly two amendments during the consideration of the bill under the 5-minute rule. If one or the other of such amendments is adopted, I shall vote for the bill. If they are not adopted, I shall be forced to vote against it; although I know that such action will prove rather unpopular with many of my fine constituents, particularly the druggists, who, I fear, have been mislead by the propaganda in favor of this measure. It is much easier and more pleasant to support than to oppose measures of this sort. In the few minutes I have I want to talk to you in a most informal way as to some of the practical effects this bill will have, as I see it. I have not the time to discuss underlying economic principles involved. We should first remember that this applies to every article which is labeled in any way by either a trade-mark or the name or a brand of the producer, and that it applies to all commodities of every possible description that can be so labeled. Then we should also remember that it applies only to contracts involving commodities entering into interstate commerce. In the first place, your grocers and retailers and druggists back home should understand that in most cases this bill will not apply at all, because a great majority, if not 80 or 90 per cent, of the dealings, particularly in the large congested States, are between a retailer and a wholesaler within the same State, and even though the wholesaler obtained these goods from a manufacturer in another State, when the wholesaler in turn makes his contract with the retailer in the same State this bill would have absolutely nothing to do with it, but the result would be dependent solely upon the law of that particular State.

Mr. CELLER. Mr. Chairman, will the gentleman yield?

Mr. BURTNESS. I have not the time to yield. It should be remembered also before voting for this bill in the form in which it is now that you are making a tremendous change in the concept we have had with reference to title and ownership of any property, for by its terms you say in effect to a merchant who has bought property and paid for it and who has put it on his shelves and mingled it with the property of the State that he can not sell it at retail on any terms which he desires. I hear some say, yes, that is true; but they in turn argue that there is the good will of the producer that goes with this property all the time. To those I reply that the retailer who has bought that property and agreed to pay for it or who has paid for it has in each and every instance paid a mighty big price for that good will. With the numerous magazines, with newspapers, billboards, and other methods of advertising that have come along in the general course of events in this country during the last 30 or 40 years, national advertising has become tremendous in volume, and of course national advertising becomes, and properly so, a part of the good will of the manufacturer who produces the article. But whenever that factory or producer sells a single item of one of these widely advertised commodities the cost of that advertising and every other item of good will is included in the price charged, and the retailer pays for it, and he must in turn charge the consumer for it. Anyone who wants to look up the amount of national advertising that has been done in recent years or the amount of good will that is carried in the statements of these large corporations who are behind this bill can readily determine how tremendous those amounts become and what a charge they really are upon the ultimate consumer.

Let us take a practical situation or two with reference to the operation of this bill if it becomes a law to retailers in your State or my State. Times are hard right now, and many retailers are unable to meet the bills of wholesalers promptly that come every month and sometimes oftener than once a month in times such as these.

If this bill were to-day in effect, if it had worked as well as the proponents of the bill hope it will, a retailer—let us say a clothier for purposes of illustration—in your district to-day would have upon his shelves shirts and collars and shoes and underwear, and in his cabinets suits and overcoats and gentlemen's furnishing goods of every description, most of which would be good branded or labeled articles covered by maintained price contracts. Assume that there is a demand that he pay his creditors and he has no ready cash. If he is tied up under this sort of a contract on a majority of all of his goods that he has on his shelves, what happens? Is he his own boss? Is he allowed full liberty to deal with them as he likes? No. He can not do what 9 merchants out of 10 would probably desire to do in a case of that sort; that is, advertise a sale, cut his prices sufficiently to move some goods, and raise enough money to take care of his creditors so as to enable him to carry on and hope for better times to come. That is just one of many practical situations under this bill that retailers will have to confront in a good many cases.

Now, what about seasonal sales? The original bill that is before you, H. R. 11, introduced by the gentleman from Pennsylvania [Mr. KELLY], does not even permit seasonal sales. When he appeared before the committee a few years ago, he and his witnesses opposed any suggestion as to seasonal sales, and such provision is not in the bill before you introduced by him. True, it is in the amended bill that has been recommended by the committee, in the committee amendment, but it was forced upon the people who were the actual proponents of this legislation by a majority of the members of the House committee, and I for one know from what they said in the hearings that they do not like it. Even after a subcommittee suggested an amendment two or three years ago to except seasonal sales the author did not provide therefor.

Mr. KELLY. Will the gentleman yield?

Mr. BURTNESS. No; I have not time to yield.

Now, what are some of the other practical situations? But before that let me ask that you give consideration to the language with reference to seasonal sales, even in the committee amendment, to see whether it covers what you have in mind when we mention seasonal sales. The amendment gives permission to cut the price only "toward the end of a season," and with reference to surplus goods "specially adapted for that season. They may be adapted for next season as well as to that season." Do we understand just what that limitation is?

For instance, in our country we use overshoes one winter out of six or seven, and some use them oftener. The merchant stocks up with them in the fall of the year. Then we may have a mild winter such as we have had this year. The people are not buying many overshoes. The supply of Goodyear overshoes, for instance, a branded article, stays on the merchants' shelves. Under this sort of legislation could a merchant in my State put on a sale now, in January, to try to move those overshoes, to try to get people to buy them and carry them along until next winter instead of having the merchant carry them? No. He can not do it now, at least. I doubt whether under the terms of this bill he could do it before in March or April, because he has to wait until the time comes that is described as "toward the end of a season." He can not do it in the middle of a season. He can not do it when the season is two-thirds gone. He must wait until toward the end of the season. Can he do it even then? Note he can dispose even then of only such surplus goods as are "specially adapted to that season," which would probably wipe out any provision with reference to overshoes, because those overshoes are not necessarily adapted only to this season, for they could be used and sold next season. [Applause.]

Dollar sales, quite customary in our country, could not be held on articles covered. Goods which may not move because of color or other reason could not be marked down.

The CHAIRMAN. The time of the gentleman from North Dakota [Mr. BURTNESS] has expired.

Mr. BURTNESS. Mr. Chairman, in connection with the revision of my remarks I ask unanimous consent to insert a letter from the American Farm Bureau Federation.

The CHAIRMAN. Is there objection to the request of the gentleman from North Dakota?

There was no objection.

The letter is as follows:

WASHINGTON, D. C., *January 28, 1931.*

To All Members of Congress:

Following is a copy of a letter sent to Chairman PARKER, of the House Committee on Interstate and Foreign Commerce, stating the opposition of the American Farm Bureau Federation to the Capper-Kelly bill (H. R. 11) and its reasons therefor:

Hon. JAMES S. PARKER, M. C.,
House Office Building, Washington, D. C.

MY DEAR CONGRESSMAN PARKER: We understand that the Capper-Kelly resale price maintenance bill is to be brought before the House in the near future by the action of the steering committee.

The American Farm Bureau Federation has many times indicated its opposition to this proposed legislation, and I now take this method of again voicing the objections we have to it, and asking you to do what you can to oppose favorable action at this time and see that it is at least recommitted.

Our reason for opposing this type of legislation was formally expressed by resolution of our annual meeting in 1927, has been reaffirmed at each subsequent meeting, and was placed in the record of the committee hearings on the bill formerly before the House Interstate and Foreign Commerce Committee when hearings were held.

The American Farm Bureau Federation, as you well know, is representative of the general interests of American farmers in fair and just legislation and national policy. Farmers are large producers of commodities which are sold in both trade-marked or branded forms and not so marked. Farmers are also the largest occupational consumer group in the United States.

As producers of marketable commodities we can see no benefits in this proposed legislation. We see in it a dangerous attack on the efficacy of the antitrust laws and laws for the prevention of illegal combinations and trade practices in restraint of trade. If enacted into law a few organized farmer groups may attempt to market their products with price-maintenance contracts.

As consumers, we buy food, clothing, house furnishings, etc., the same as other consumers, and also large quantities of feeds, seeds, fertilizers, machinery, and supplies, practically every item of which would be subject to the price-fixing contracts legalized by this proposed law. Because of this, if and when this bill becomes law, farmers—our members and all others—will be subject to the maintained high prices which manufacturers will be able to force upon their retail distributors through the method of price contracts legalized by the law.

It is true that some stores, large and small, employ methods of buying and selling which cause losses both to producers and to other distributors of farm products, but we can not discover any method whereby farmers can take advantage of this law and utilize price maintenance and contracts to end this evil. It is also true that farmers as buyers are sometimes victimized by merchants who use cut-priced "bait," but we can not find anything in this bill which will prevent these merchants from buying all the merchandise they may need for such "bait" from manufacturers or producers who do not or can not utilize the device that it provides.

In other words, we recognize and are hurt by some of the evils that others, who seem to think this legislation a panacea for all merchandising ills, complain of; but we have given the matter careful study and can not see that this bill will help cure them. We do believe that it will lead to even worse conditions of ending fair competition between retailers, of creating manufacturer monopolies, and of preventing the full effect of reduced manufacturing and distribution costs from being reflected to the final consumers—and that is all of us.

This bill now before the House is not the same bill which was thoroughly studied by the Committee on Interstate and Foreign Commerce. Many defects were pointed out in that bill. This bill is new in language, and could it be studied similar defects would certainly appear. At the same time there are trading evils which should be the subject of careful legislation. The American Farm Bureau Federation therefore vigorously objects to final action at this time and earnestly asks the Members of the House to send this bill back to the able committee that has been considering it that constructive legislation may be reported.

Congressman KELLY, chief proponent of this bill, in a statement printed in the RECORD of January 17, 1931, quoted both the president of the American Farm Bureau Federation and the master of the National Grange in an effort to show that they were in favor of this legislation. The statement quoted referred to the evils which I have referred to above; that is, to what has been termed "cutthroat price cutting." We all agree that this evil should be reached and corrected.

But it can not be urged by anyone that the American Farm Bureau Federation would venture to ask for a law which would break down our antitrust laws and end free and open retailer competition, which brings to all consumers the benefits of reduced prices and economical merchandising, for the minor purpose of ending this minor evil in our merchandising system. This is certainly not the view either of President Thompson or of our organization, which, as stated above, is clearly and distinctly on record opposing this legislation.

You may use this letter in any way you think desirable in your effort to have this bill recommitted.

Very respectfully,

AMERICAN FARM BUREAU FEDERATION,
CHESTER H. GRAY,
Washington Representative.

Mr. BURTNESS. Organized labor also appeared at the hearings, by formal letter signed by Mr. Green, in opposition to the original bill.

The United States Chamber of Commerce did not approve it in its referendum thereon.

Mr. PARKER. Mr. Chairman, I yield five minutes to the gentleman from New York [Mr. REED].

Mr. REED of New York. Mr. Chairman and gentlemen of the committee, it was not my intention to say anything with reference to this bill. I have heard a great deal of scientific discussion on the merits of the bill and the demerits of it.

I want to bring to your attention in just a minute or two the human interest side of this bill. Almost every Member of this House comes from an average-size community. In your community are quite a large number of very substantial citizens. Those citizens are the merchants of your town. From the beginning of the history of this Government the backbone of every small community has been the merchants of that town. Even at the present time, if you can visualize your town and other towns of similar size in your community, you see a host of committees going out to canvass for the Red Cross. Through all the years, in every emergency the backbone of your community leadership has come from the merchant class of your city. I recall several depressions in my district since I was a young man. During those depressions thousands of men have been thrown out of employment, and it has been necessary for their families to eat. Where have they gone for their supplies? They have gone to the little local merchant and that merchant has carried them through the entire depression, and most of the men who have received that credit to feed their families have later paid back what they owed to the local merchant. But conditions have changed some. We are in a depression now. Meantime, since the last depression the chain store has come along. How does the chain store meet these local emergencies? Do they contribute to the Red Cross in the local community? Do they go out and help build the new church? Do they support your chambers of commerce and your trade organizations? Do they contribute to other charities in your city? They do not. They give you the stony stare. Where does their money go? Their money is not left overnight in the bank if they can avoid it. Where does it go? It goes to New York City; it goes to Chicago. It does not help the local industries through the banks at all. They ignore every solicitor who comes to them for help.

Ladies and gentlemen, there is a bigger problem here, perhaps, than we realize. We can not afford to foster by inaction any system that tends to destroy the backbone of our communities, and I just want you to give thought to that. The provisions of this bill will tend to help the local merchant meet the chain-store menace. Therefore I am for the bill. [Applause.]

Mr. Chairman, I yield back the balance of my time.

Mr. RAYBURN. Mr. Chairman, I yield five minutes to the gentleman from New Jersey [Mr. FORT].

Mr. FORT. Mr. Chairman and members of the committee, the whole policy and conduct of mercantile business has changed in the last 30 years. Goods are no longer sold in any community in the Nation so much upon the faith and credit of the merchant's name as upon the publicity value which has been created for the name of the product through advertising. This has been built upon the protection which the law affords to trade-marks and trade names. Inevitably the Congress of the United States, within a very few years, must enter into a general policy of regulating the use of trade names and trade-marks to guarantee the maintenance of quality and probably the abstention by the producer from unfair price methods. This bill is the first step in the direction of regulation of trade-marks and trade names looking to the public interest. I doubt whether we should tackle this question piecemeal. But since we have we should be doubly careful as to the form in which we act lest we hamper our eventual consideration of the whole problem.

To my mind, the purpose of this bill in the mind of its draftsmen is sound. To my mind equally, however, in the

form that the bill comes before the House it is unsound and will fail to accomplish the purposes of its draftsmen. As it now stands, this bill will strengthen the chain store rather than weaken it. [Applause.] And will strengthen and enlarge the producer's control of monopolistic products to the primary detriment of all merchants and all consumers, with the absolutely certain ultimate effect of further laws governing the producer himself.

It will strengthen the chain store because it prohibits any differentiation in price between that retailer who sells for credit and makes deliveries and that retailer who sells for cash and makes no delivery. If the same basis of price be once fixed upon the retailing of a product, the profit of the cash-and-no-delivery merchant becomes enormously greater than he now secures under the present system which requires him, for competitive reasons, to cut his price because he gives no such service. The goods are not sold on his name or his advertising if they are trade-marked goods. The cost of selling those goods is paid by the manufacturer who is seeking protection under this bill when he pays for his advertising of the trade name. The merchant who sells for cash, if he must exact the same price as the merchant who sells on a credit-and-delivery basis, will make as many sales of the trade-marked article as he makes to-day, and his profit on every sale will be far greater.

They say he uses trade-marked articles as leaders to attract trade. Well, if he be a grocer, can he not sell granulated sugar, which is not a trade-marked article, as his leader at a lower price than other merchants sell and attract trade to his store in the same way, and make a larger profit on the trade-marked articles which he sells? Of course he can.

Another thing is in this bill which I think has been overlooked: This is the first time, so far as I am advised, that legislation has been proposed which permits patented articles to have their prices fixed and regulated by the owner of the patent.

We are already conferring an enormous and monopolistic advantage upon the holders of patents. It is a grave question whether the further power to fix retail prices should be given where an article is both patented and sold under a trade name.

At the proper time I shall offer and discuss certain amendments to the form of the bill designed to make it more nearly fulfill the purposes of its proponents. But at this time I do want to call to the attention of the House the grave importance of what it is considering and the need of the most serious and thoughtful effort to prevent an unfortunate first step in the inevitable control of trade-marks and trade names. Unless this bill be substantially amended it will neither accomplish its purpose nor form a wise precedent. [Applause.]

The CHAIRMAN. The time of the gentleman from New Jersey has expired.

Mr. PARKER. Mr. Chairman, I yield five minutes to the gentleman from New York [Mr. CULKIN].

Mr. CULKIN. Mr. Chairman, I have just been apprised that time has been allotted me. Necessarily my discourse will be more or less fragmentary and disconnected. But one thing has occurred to me in connection with the discussion of this question, and that is the effect upon the economic life of America of the passing of the independent retailer, because unless such safeguards as these are thrown around the independent retailer the independent retailer is sure to disappear. In line with that I saw a statement yesterday, made by Mr. Green, the president of the American Federation of Labor, to the effect that some 5,700,000 people in America were out of employment. Undoubtedly 4,000,000 of those people are the heads of families, supporting three or four people in each family, and making an aggregate of approximately 12,000,000. Of those it is safe to say that 8,000,000 are dependent to-day upon the credit extended by the independent retailer. There is no credit extended by the chain stores. They "take the cash and let the credit go." To-day a large part of the economic dependents of America are being carried on the books of the independent retailer.

Say what you will, a definite and careful analysis of this bill indicates that it will help give the independent retailers a place in the sun. That fact can not be gainsaid.

I have in my district a manufacturing concern that makes plated silver, an article of utility, an article of charm, and which has a good will based upon an extended advertising program. It employs 2,000 people. They tell me that this copyrighted article is being driven from the market and that these workmen of my district, 2,000 in number, are being driven out of employment by the practice of using this particular article as bait.

This bill will protect the manufacturer who produces an article of utility which can not be produced at a less figure and which is being destroyed by the nefarious price cutting that is going on in America.

I say, in conclusion, that unless something is offered to stop the growth of the chains and the resulting disappearance of the independent retailer, community life in America is sure to disappear. With community life in America gone the foundation of the Republic is gone, because the Republic is and has been from the beginning built upon community life.

So in the brief time allotted me, and entirely without preparation, I make these suggestions for your consideration. This bill may not be a perfect bill, but it is a certain material aid to the independent retailer and will help the psychology of his present difficult situation. [Applause.]

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. RAYBURN. Mr. Chairman, I yield 20 minutes to the gentleman from Alabama [Mr. HUDDLESTON].

Mr. HUDDLESTON. Mr. Chairman, I am a conservative and moderate man and like to make conservative and moderate statements. Therefore I must content myself by saying at the outset that this bill is a fraud; it has a fraudulent title and is supported by fraudulent arguments.

THE FALSE FACE OF CHAIN-STORE OPPOSITION

The first false face that I wish to strip from this legislation is the pretense that it is aimed at the chain store. Its proponents iterate and reiterate that statement and bolster it with bald assertion after bald assertion until I have almost come to believe that they honestly believe it themselves.

Of course, the legislation is nothing of the kind. That pretense is a mere afterthought. They are merely seeking to take advantage of the public opinion in opposition to the chain store to get over something for their own selfish advantage. That is all there is to that assertion.

This legislation has been pending in Congress for nearly 20 years. At the time it was first brought forward it was pushed with just as much diligence, earnestness, and persistence as now, yet there was then no chain-store problem. We had scarcely heard of the chain store. In their arguments in behalf of the bill at the first hearing they did not mention the chain store. It is only after the chain-store problem has become acute and there has arisen a good deal of public opinion in opposition to the chain store that we find tearful gentlemen getting up here and, while admitting that they are dealing in glittering generalities, claiming that they are trying to put the chain stores out of business.

When pushed even to extremities, they never attempt to give any reason for their assertion that it will hamper the chain store beyond the extremely shadowy claim that the gentleman from Pennsylvania [Mr. KELLY] attempted to give this morning, that the chain stores, by price cutting, are able to drive the independent out of business.

THE PRACTICE OF "PRICE BAITING"

Why, "price baiting" and "cutthroat competition" were practiced long before there was a chain store. The denunciation by Judge Holmes, behind which the gentleman from Pennsylvania and these representatives of selfish interests who now sit in the gallery and applaud his statements attempt now to shelter themselves, was made when there was

no chain store and no chain-store problem. It was not aimed at the chains but at the individual price cutter.

Price baiting is practiced by the lowliest and smallest of merchants. The less of capital and responsibility they have the more certain they are to practice price baiting. The less they have to lose in the way of reputation the more certain they are to bait their customers with cut prices. The most lowly "puller in" on the Bowery has a suit of clothes in his window with a practically "give-away" sign on it, only you can not get him to give it away. On the strength of it he leads you into his store and "sells you something."

The relation which this bill has to the chain-store problem is rather remote. It has been pointed out to you by the gentleman from New Jersey [Mr. FORT] and the gentleman from Ohio [Mr. CROSSER] that instead of hindering it this measure is really in the interest of the chain store. Their arguments upon that question are absolutely sound. There are many staple articles, with quality and price established and well known, which the price baiter may use, for they are unbranded and un-trade-marked. I saw an ad the other day "10 pounds of sugar, 49 cents." That was a better bait than any cut on a branded article. The chain stores, buying in vast quantities—perhaps taking the entire output of a mill—are able to dictate the terms. They are not at the mercy of the trade-mark or brand owner. He is at their mercy, and they can force him to agree to a resale price which will yield them a good profit on the quantity price which they have paid, but which would be below the cost price charged the small dealer with whom they compete.

CHAIN STORES NOT AGAINST BILL

In such relation as this bill has, it is favorable to the chains. In that aspect, it may be called a chain store bill. If you want to do something to the chain stores, vote against this bill; if you want to do something for them, go on and vote for it. If the chain stores are against this bill why do they not let me know about it? I, acting alone, filed the minority report against it. So far as the world knew the committee stood 20 to 1 against me in favor of the bill instead of 12 to 9. The gentleman from New York [Mr. PARKER] might have gone further and told you that out of the 12 who voted for it, 4 members had never heard the hearings and were not even Members of Congress when the hearings were held.

Why have not the chain stores said something to me if they agree with my position? Why have they not tried to bolster me up? Why have they not urged on me, as the interests supporting the bill have others, that I should make speeches or dump some junk into the CONGRESSIONAL RECORD, so they might circularize Members of the House and the country with it. They have done nothing like that for me. To the contrary, as a part of the propaganda I have received in behalf of this bill, representatives in my district of two chains doing business there have advocated the bill.

I had a telegram this morning from the officers of a chain having probably 30 drug stores in my home city, in which they urged me to vote for this bill, only they did not offer the specious pretense that is presented here that it would be helpful to the "small, independent merchants." [Laughter.] A chain of plumbing fixtures, having a store in my district, caused their local manager, who is my personal friend, to ask me to vote for this bill.

No representative of any chain has ever asked me to oppose this bill. If they are opposed to it, why were they not before the committee opposing it? They were not there. Do you not think they know their own business? Are you not willing to trust them to understand what is to their interest? No; they wait for the proponents of the bill, who are their critics here, to assert that the defeat of this measure will help them.

THE FALSE FACE OF "UNFAIR COMPETITION"

The second false face that the proponents of this measure have put on is that it is intended to prevent "predatory price cutting"; that it is intended to prevent "unfair competition," as they call it—that is, selling for less than a reasonable profit. They say that there are certain merchants who make a business of "baiting" their customers—who have the practice of advertising well-known goods for sale at less than cost, and thereby getting customers into their stores, and then skinning them on other articles. This is the sole and only excuse they make for this piece of legislation.

Well, I might well answer this pretense by a frontal attack and say if there is a poor, beleaguered consumer in the country who can possibly get a cent or two off on something he wants to buy through a dealer selling it to him for less than cost, for God's sake let him have it. The consumers are being skinned on every purchase. They are badly enough off no matter what can be done. This bill would rob them even of the poor privilege of taking advantage of a "bargain sale."

But the prevention of selling for less than cost is not the real purpose of the bill. If it were the real purpose, why is it that they do not come out and frankly, clearly, and honestly forbid cutting prices below cost or below a reasonable margin? No; they do not want to do that. If I were to offer an amendment to this bill giving retailers the privilege of selling the articles protected by the bill for a profit of as much as 10 per cent above the cost price, they would fight it to the limit. That would stop the "price baiting" but they are unwilling that there shall be any competition whatever.

EFFORT TO PREVENT ALL COMPETITION

What they really want to do, under the guise of preventing cutthroat competition, is to prevent all competition. They hold their noses and they say "there is a dead rat in this barn, therefore we are going to burn down the barn." They point to an abuse of competition—a minor abuse—and then they say that "because of that minor abuse we will forbid all competition."

If they were honest in their desire to prevent cutthroat competition, they would limit their measure to forbidding cutthroat competition and not go beyond that. If they were honest in saying that what they want is to prevent cutting prices below a reasonable margin, why do they not stop with forbidding such cutting of prices?

No; that is not this measure which they advocate here, it is for preventing any cutting of prices whatsoever. The price fixed by the manufacturer's agreement for resale may allow the retailer 500 per cent profit; yet the retailer can not reduce the price to 200 per cent or to 400 per cent to himself—he must exact of the consumer the full 500 per cent profit. In order to prevent the retailer from reselling a product for an unreasonably low price, they propose to fix the price and prevent him from selling it at any reduction whatever, no matter whether he is left a fair profit and a fair price or not. Does not this expose the insincerity of their argument?

Will these gentlemen agree to an amendment which would give the retailer the right to sell at anything above cost? Not by any means. That is not what they want. They would never submit to that. What they want to do is to control the price, and to fix the price, to stabilize it, and to prevent all competition whatever in their products.

WILL TURN DOWN SCREWS ON RETAILERS

When they have succeeded with their scheme and have converted the retailers into mere agents, when they have made of the retailer a mere agent for the producers of advertised specialties, then will they begin to turn the screws down on him. Then they will begin to increase prices to the retailer—then they will begin to cut down his margin. The public will have been taught to buy a dollar watch for which the retailer paid 60 cents; then they will make the retailer pay them 90 cents for the dollar watch, but he must still sell it for a dollar. That is one of the purposes back of the whole scheme; it is to squeeze both the consumer and the retailer. The pitiful thing about it all is that thousands of struggling merchants throughout the country, some of them in my own district, have been deceived by the propaganda of the selfish interests and have been induced to support this bill.

I remember when the hearings were held they had got a poor crippled young fellow who was running a drug store in my home city and brought him up here, because he was my friend, for his influence on me. He appeared before the committee but they did not let him say anything. All he did was to sit there and look at me in the most piteous way, as I showed by my questions that I was opposed to the bill. I felt for him. I would have gladly done anything I could for him. I felt for him so much that I would not deliver him, bound hand and foot, into the clutches of the greedy interests who appeared before us pushing for the bill. [Applause.]

NO HEARINGS FOR TWO CONGRESSES

This bill has had no hearings for the last two Congresses. It was first introduced in somewhat different form about 20 years ago. A hearing was held before the World War. Another hearing was held in 1926 in the Sixty-ninth Congress. No hearing has been held in the Seventieth Congress or in the Seventy-first Congress. Always Mr. Colgate, who was a small, independent manufacturer [laughter]—always Mr. Colgate, the soap man, was the leading protagonist on the scene, he and other "small independents." Always they appeared before us and urged this legislation, and always they tried to get the committee to report it out.

Then this gentleman passed from the scene of earthly activities. Mr. Colgate died poor, almost destitute, because of the "unfair trade" practices and "cutthroat competition," through the sale of a little stick of shaving soap that costs 2 cents to produce but which is sold for 30 cents to suffering consumers; of course, he died poor, worth only a few millions, on that account. His life is ended; it is too late, so do not try to help him; he is gone. [Laughter.]

These "small independent producers," most of them worth millions made through monopolistic practices, came before us and urged this legislation. They were not able to get it out for years but finally four members of the committee, neither one of whom had ever heard the hearings, one of whom had been an attorney for one of these manufacturers, and the other three had scarcely ever heard of the subject before, came to their relief and they succeeded in getting a majority of 3 upon the final vote. That majority was not composed of members who had heard the hearings and who by reason of their long service upon the committee knew something about the questions involved.

Why was not Mr. PARKER for the bill? Why did he not vote for it? Why did not Mr. RAYBURN vote for it? Are they trying to protect the chain store? What an absurdity! Are they trying to protect cutthroat competition, have they forgotten the interests of commerce? You do not know these two gentlemen if you think anything like that. They had some feeling in their hearts for the old-fashioned principles upon which our economic system is based [applause], the principles of competition. [Applause.]

A DRIVE ON COMPETITION

This bill is a direct drive upon competition. Its purpose is to give a monopoly without subjecting its beneficiaries to Government regulation. I quote what I said on March 12, 1930, upon the bus bill, which had a similar purpose—

There are a great many men in this country who are dissatisfied with competition. They are going into mergers to avoid competition with each other. They are consolidating their industries to avoid competition. They are raising up mountain-high tariff barriers to avoid competition. They are making secret trade agreements and evading the antitrust laws, to avoid competition. These men have attained a state of wealth never known before in the history of the world. Their whole existence as business men is founded on the system of competition; yet these men are now driving on toward socialism.

I warn them that those who strike at competition are striking at the fundamentals of our economic system. Do not think that the people of this country are always going to submit to compromises with monopoly. Do not think that this country can be organized into a system of monopolies and can be continued on that basis.

* * * * * * *

I believe in the old system. I believe in competition. I am an old-fashioned man. I believe in the old-fashioned political system and the old-fashioned economic system. They are tied up with each other and can not exist independently. When one goes, the other will go.

I believe in the old-fashioned system of competition; I want to preserve it; I defend it. I want to tell you, gentlemen, that when you drive forward with such measures as this you are driving toward the day when men will say, "The system which we shall adopt shall be in the people's interest and not in the behalf of those who want to exploit the people."

What I said of the bus bill is equally applicable to this bill. Its proponents, in the main, are those who have profited greatly from our present system—the competitive system. Having grown rich under that system, how singular that they should now try to destroy the system.

MERELY ANOTHER SELFISH-INTEREST MEASURE

This is merely another selfish-interest measure. The general public does not want it—they have hardly heard of it. Those who are pushing it are merely trying to get more profits for themselves, and the consumer is to be the sufferer.

The hearing was really amusing. The selfish interests were all there, both for and against the bill. The committee room was made an arena for their struggle over who should have the pleasure of skinning the consumer. Colgate and his cohorts of patent-medicine packers and other producers of nationally advertised goods were there on one side, and Strauss with the department-store allies were on the other. It was a battle royal between them. The consumer was not there. The general public was unrepresented. Nobody cared for them. They were merely to be the victims. They stood to lose either way. The scene would have been farcical had it not been for this element of seriousness.

AN AGE-OLD CONTROVERSY

Mr. Chairman, we do but continue here to-day the age-old controversy between those who sell and those who buy. An arena for this conflict has been found in every country and in every time since the beginning of the most primitive commerce.

Where seller and buyer deal with equal advantage and equal opportunity, and under conditions of fair and open competition on both sides, the prices are substantially just to both parties. Where there is lack of competition or of free bargaining power on either side injustice is inevitable.

In its proper nature trade is equally beneficial to both buyer and seller. The theory that it is more profitable to sell than to buy is based upon the assumption that an unjust price will be extorted. It is a certain sign that fair conditions do not prevail when the buyers, as a class, grow poorer and the sellers, as a class, grow richer as the result of their dealings. Commercial nations grow rich in proportion as they enjoy superior capacity or other advantage which enables them to exact more than a fair profit. This is the basis upon which trading nations and classes always seek opportunities to trade with the undeveloped and uninformed.

As a rule, the sellers are better organized. Each individual deals with a number of unorganized persons as buyers. Also he usually has the advantage of control over supply. As a rule, organized society—governments—have not felt called upon to intervene except to protect buyers from extortion because of the superior advantages held by the seller. Rarely indeed have governments intervened to enable sellers to get better terms or higher prices. Even when sellers abuse their advantages governments are frequently influenced to keep out of this field through the superior political power of the sellers. How amazing, then, to meet here the effort to throw the sanction of the Government into the scale on the side of those who have already grown rich on prices exacted from the consuming classes.

BRISTLING WITH IMPUDENT INJUSTICE

At almost the beginning of the English system of markets, it was adopted as a sound principle of public policy that the seller of goods should not be permitted to agree with the buyer upon the price at which same should be resold. This age-old principle of the common law was cited by Lord Coke—it came to America with our colonial fathers, and has been universally adhered to in the jurisprudence of the States—it has been approved by the decisions of our

Supreme Court. The antitrust act of 1890 included a reaffirmation of this principle. It is amazing to note that by the bill now before the House it is proposed to set aside this fundamental rule—that it is now proposed that the Government shall intervene in aid of higher prices for those already our richest class that they may derive higher and more stable profits from the consumers, already our poorest class. Surely such a situation is not lacking in humor, though bristling with impudent injustice.

In extension of my remarks I include the minority report on the bill which I filed on February 1, 1930, as follows:

Mr. HUDDLESTON, from the Committee on Interstate and Foreign Commerce, submitted the following minority views (to accompany H. R. 11):

1. The purpose of this bill is to enable large producers to dictate to dealers the price at which an article shall be sold at retail. It is called "A bill to protect * * * the public against injurious and uneconomic practices * * *." It might more candidly be named "A bill to foster monopolies."

2. There is no public demand for this bill. It is merely another selfish-interest measure. It is pressed by interests seeking larger and more stable profits The consumer's welfare is totally ignored.

3. This bill legalizes contracts which are now unlawful. To do so it uproots an age-old principle of the common law. From time out of mind public policy has forbidden that a person selling goods should contract with the purchaser to fix the price at which same should be resold. The majority report supports its conclusion by an extract from an argument made by a member of the committee in a case in which he was an attorney. Possibly this warrants a citation of the law as pronounced by the Supreme Court in the case of Miles, etc., *v.* Park & Sons Co. (220 U. S. 373). The court, dealing with the identical point and supporting the opinion by numerous citations, says:

"But agreements or combinations between dealers, having for their sole purpose the destruction of competition and the fixing of prices, are injurious to the public interest and void."

Sound public policy has always forbidden, and sound public policy must always forbid, such contracts.

4. The fundamental upon which business is founded, and on which it has attained its present state of unprecedented development, is the system of open and fair competition. It is the foundation of our economic philosophy. It is the system under which American business men have become the richest class in the world. How amazing it is, then, to find respectable members of that class resorting to tricks and devices, legal and otherwise, to evade competition and to thwart its rules. How amazing to find them supporting a bill aimed directly at the system to which they owe their very existence. More and more we find business unwilling to compete or resorting to competition in nonessentials only. The spread between the cost of production and the price exacted from the consumer has more than doubled in the last 15 years. Much of the competition that remains consists in advertising and other distribution methods, from which the consumer derives little or no real benefit and which, hence, is an almost total economic loss. This process can not go on indefinitely. If business men will not compete voluntarily, legal means must be found to compel them to do so. Failing this, our system is marked for downfall. If the general public can not find in competition protection from extortion, they will resort to a more drastic collectivism. There are three economic systems—first, competition; second, the compromise of regulation by law; and third, socialism. Which will sensible business men choose?

5. An effort is made to present the bill under the cloak as being aimed at the chain store. The effort is to capitalize the opposition to the chain-store system. In truth, the bill has no bearing whatever upon the chain-store problem.

6. The larger producers and packers support this bill. It will increase their profits and make them more secure. Numerous retailers have also been induced to support the bill by the propaganda that it will relieve them from "price cutting" and other competition. They do not realize that they are to be the ultimate victims of the measure More and more the retailer will become a mere "agent" and his store a mere depot through which advertising producers distribute their products. More and more he will be driven toward the position of servant for the large producer master, and the good will which he may strive to build will belong to the latter. The retailer can get no permanent benefit from this bill. To retain his independence he must face in the opposite direction, refuse to handle advertised specialties, and assert his right to handle his goods under his own labels, upon merit and price, according to old-time competition.

The foregoing is confined to the general principles applicable to the bill. Its objectionable details, of which there are a number, are obvious.

Respectfully submitted.

GEORGE HUDDLESTON.

Mr. PARKS. Mr. Chairman, may I submit a parliamentary inquiry?

The CHAIRMAN. Does the gentleman from New York yield to the gentleman from Arkansas?

Mr. PARKS. I do not ask him to yield. I have been here eight years and I have not the right to even submit a parliamentary inquiry. I do not want it. [Laughter.]

Mr. PARKER. Mr. Chairman, I yield the balance of my time to the gentleman from Pennsylvania [Mr. KELLY].

Mr. KELLY. Mr. Chairman and members of the committee, the gentleman from Alabama [Mr. HUDDLESTON] has made a most impassioned speech, based apparently on the contention that chain stores will be benefited by this bill. That is as illogical as the statement of the man who thanked God that he was an atheist.

It is an indictment of the intelligence of the millions of little independent business men of America, who are in a life-and-death battle with these great chain organizations. They are not dealing with theories but with the cold, hard facts of brutally unfair competition. They have implored Congress, 99 per cent of them, to pass this bill which will give them a chance to protect themselves against a cutthroat practice which injures everybody except the ones who use it.

O Mr. Chairman, the gentleman says that chain stores have not asked him to oppose this bill and that they were not at the hearings opposing it.

The fact is that practically all of the opposition registered at the hearings was directly or indirectly chain opposition.

At the hearing before the Interstate and Foreign Commerce Committee the manager of the opposing testimony was Lew Hahn, then managing director of the National Retail Dry Goods Association. He is now president of the Hahn Department Stores (Inc.), a nation-wide organization controlling the following department stores:

Jordan Marsh Co., Boston, Mass.; C. F. Hovey Co., Boston, Mass.; L. S. Donaldson Co., Minneapolis, Minn.; The Bon Marché, Seattle, Wash.; The Golden Rule, St. Paul, Minn.; The Rollman & Sons Co., Cincinnati, Ohio; Joske Bros. Co., San Antonio, Tex.; Herpolsheimer Co., Grand Rapids, Mich.; The Titche-Goettinger Co., Dallas, Tex.; O'Neill & Co. (Inc.), Baltimore, Md.; Quackenbush Co., Paterson, N. J.; The A. Polsky Co., Akron, Ohio; The Morehouse-Martens Co., Columbus, Ohio; The James Black Dry Goods Co., Waterloo, Iowa; Rudge & Guenzel Co., Lincoln, Nebr.; Maas Bros., Tampa, Fla.; The Meyer's Co., Greensboro, N. C.; The L. H. Field Co., Jackson, Mich.; F. N. Joslin Co., Malden, Mass.; The Muller Co. (Ltd.), Lake Charles, La.; Louis Samler (Inc.) (The Bon Ton), Lebanon, Pa.; A. E. Troutman Co., Greensburg, Pa.; A. E. Troutman Co., Blairsville, Pa.; A. E. Troutman Co., Indiana, Pa.; The Troutman Co., Connellsville, Pa.; S. P. Reed Co., Latrobe, Pa.; Alf. M. Reiber & Bro. Co., Butler, Pa.; Broadbent Martin Co., Du Bois, Pa.

Another opponent at the hearings was Percy S. Straus, vice president of R. H. Macy & Co., of New York City, which controls the following department stores in one chain:

R. H. Macy & Co., New York City; L. Bamberger & Co., Newark, N. J.; La Salle & Koch, Toledo, Ohio; Davison Paxon Stoke Co., Atlanta, Ga.

Another opponent was Edmond A. Wise, New York attorney, who introduced himself as attorney for the R. H. Macy Co. and counsel for the National Dry Goods Association.

Another opponent was Ralph C. Hudson, representing O'Neill & Co., department store of Baltimore, which you will find listed as a member of the Hahn chain.

Mr. Chairman, these witnesses took nine-tenths of the time given the opposition at the hearings. Nine-tenths of the telegrams and letters received by members in opposition have been inspired, I feel confident, by these same interests.

Now, Mr. Chairman, Mr. Straus, of the Macy chain of department stores, opposed the bill at the hearings on the ground that it would require his concerns to take bigger profits than they desired. They can sell goods 6 per cent less than anyone else because they are so efficient, he declared. Therefore he argued that he should not be compelled to take that extra 6 per cent profit on these identified goods.

That sounds altruistic and is certainly just as altruistic as the letter I referred to a little while ago, which was sent

to you by the great Associated Grocery Manufacturers, asking you to vote against this "oppressive" bill which will give the little manufacturer a chance on equal terms with the great combinations.

However, there are official records as to Mr. Straus's policy. Here is a record of purchases by customs agents at the direction of Secretary of the Treasury Mellon, under resolution of the Senate at the time the last two tariff bills were under consideration. It was desired to learn the effect of the tariff on retail prices of imported merchandise. These items are taken from the reports to the Senate:

Article	Where purchased	Date	Landed cost	Retail price	Percentage of price to cost
Pie plate	R. H. Macy & Co., New York.	May 25, 1922	$0.103	$0.29	181
Glass lamp dome	do	May 26, 1922	.458	1.74	280
Glass lamp chimney	do	do	.0641	.23	258
Salad set	do	May 22, 1922	1.64	4.75	189
Marcel iron	do	do	.1251	1.39	1,012
Sauce pot	do	May 25, 1922	.40	1.24	210
Dinner set (100-piece)	do	June 1, 1922	35.30	134.00	279
Dinner plate	do	May 25, 1922	.327	.98	199
Aluminum teaspoon	do	do	.0059	.04	580
Sewing basket	do	June 1, 1922	2.01	7.54	274
Scrub cloth	do	do	.0666	.26	290
Castile soap	do	Oct. 15, 1929	.92	2.34	150
Steamer rug	do	Oct. 1, 1928	6.32	14.89	136
Bridge set	do	Oct. 15, 1929	2.92	6.94	138
Barometer	do	Oct. 16, 1929	1.40	7.94	467
Apollinaris water	do	Oct. 22, 1929	.1194	.39	227
Beaded trimming	Namm Store, Brooklyn.	June 12, 1922	.082	.25	204

Remember, members of the committee, these products listed here are all nameless, unidentified, imported goods. These are the profit makers to balance against American-made, trade-marked goods, whose prices are slashed to a ruinous point to make "bargain bait."

Mr. Chairman, I would be satisfied if I could have every Member carry out that old formula "put yourself in his place." He would then understand the position of those who are asking relief from unjust conditions.

Put yourself in the place of the little retail dealer who has spent many years in serving his friends and neighbors, asking only profits sufficient to afford a moderate livelihood for himself and family.

Suddenly, after all the years during which the community was developing, a unit of a nation-wide chain is established next door. There is a campaign of ruinously low prices on widely known goods. The former customers drop away, lured by bargain bait. The chain can make up its losses on unnamed goods or it can afford to lose money for a time to eliminate competition.

Put yourself in the place of that community merchant and say what your action would be.

Put yourself in the place of the wholesaler, who has helped for many years to build up the business of a wide territory. He has extended credit and shipped in small quantities. He counts his customers as his friends and associates.

One by one they are eliminated by nation-wide organizations, who have their own wholesale agencies. He sees the game which is being played, trick prices on widely advertised goods, but he is helpless to prevent the destruction of his customers.

Put yourself in the place of this wholesaler and say what your reaction would be.

Put yourself in the place of the little manufacturer whose whole life and ambition is in making a good article with his name and guarantee on it. It is so good that it gets the approval of the public. Then it becomes good bargain bait. It is advertised at a ruinous price by those who do not want to sell it, but instead some substitute. His independent customers are indignant and blame the manufacturer. He is helpless and the independents refuse to sell an article on which no profit can be made.

Put yourself in the place of that little independent maker of quality goods and say what your reaction would be.

Mr. Chairman, the news of the passage of this bill as it stands will cause more genuine satisfaction than any act of this Congress. There will be rejoicing in the hearts of more than 1,500,000 individual proprietors of their own retail establishments. More than 130,000 independent wholesalers will hail it as encouraging evidence of interest in the problems which confront them. More than 75,000 small manufacturers engaged in making distinctive, identified products will know from this action that Congress has taken note of the destructive competition they face to-day and is determined to give them a chance to protect themselves against it.

All these American business men, with their employees and families, make up a considerable group within the American community. They are entitled to the necessary time for the consideration of the most important problem in American business.

Still, that is not alone the reason for supporting this measure. Let us remember that, except for those persons who render no service at all or produce nothing at all, there is no exclusive consumer class in this country. Everybody else is both a consumer and a producer. The wage earners of this country are essentially producers. They are the first to be injured when the products they make can not be sold through orderly marketing. No matter how high the rate of wages, they are of no value without employment.

This bill will help to stabilize marketing and employment. Certainly we need that to-day as never before. We are facing a dangerous condition. Monopolies and mergers in production are the order of the day. Giant chain organizations are getting a strangle hold on retailing.

In 1929 alone 265,000 salesmen were thrown out of jobs as the result of food mergers. In the last eight years 300,000 independent merchants have been put out of business by chain-store methods of competition.

These are but results. The cause is cut-throat competition. The years 1928 and 1929 were called years of "profitless prosperity." It was a false name, for there can not be prosperity without profits. In each of those two years, according to W. T. Grant, of the Grant Department Stores, from three to five billion dollars' worth of goods were sold at less than the cost of production in a wild-jungle war of retail merchandising.

Some persons may have thought they were profiting when they bought goods at prices which were destructive. Now they and all of us are caught in the resulting depression. Those who are suffering are evidence of the high price of such a system of business.

The chain stores have expanded like a green bay tree on this false pretense system by which they offer identified, nationally known products at less than cost of production, while taking extortionate profits on unidentified and other goods which can not be compared.

Their growing control has had its effect upon conditions in local communities. Have you noticed that destitution during this depression has been more bitter than ever before? Have you considered why there is such a demand for Government money to take care of distress in local communities?

There is a reason. In other times the independent merchants extended credit to honest workers out of jobs and tided them over to happier times. By caring for a few each, the merchants of this country could extend and did extend a helping hand to millions of workers, who would not appeal for charity or accept charity.

The chain-store system is not built on that basis. Orders from New York City forbid credit under any circumstances. That means that loss of a job means destitution stark and severe.

The Russell Sage Foundation has just completed a survey of unemployment and distress in local communities. In that report they state that the independent merchants are the strongest bulwarks of the unemployed against destitution. They further state that the little retail dealers, especially in food, have seriously exceeded the limit of safety in extending credit and they suggest that bankers should make loans to the merchants to help them carry on in this time and stress.

If retail distribution to-day were in the hands of individual proprietors there would be no such cry for direct relief as is heard to-day. But the fact is that in a great many communities more than half of all retail business is in the hands of the chains, which demand "money down or no goods."

Is it not high time to say that there shall be no further extension of this domination, at least by unjust and destructive competition.

This bill goes no further than that. It simply makes it possible to take from the hands of great merchandising combinations a weapon of unfair competition which they have used in the past to the destruction of independent business.

LOWER PRICES FOR CONSUMERS

Mr. Chairman, I propose to prove that the practice of using standard, high-grade, identified products as bargain bait inevitably means excessive prices and profits on other goods which are not identified and can not be compared. Such "bargain" prices go hand in hand with buccaneer prices. The price cutter is also a profiteer. Every penny given as a saving on standard goods is matched by two pennies in undue prices on unnamed goods.

I will prove by their own statements that this is the end sought by those who use and defend this practice. It is the avowed purpose behind this merchandising scheme to give "bargains" on 10 per cent of sales made in order to make undue profits on 90 per cent of sales.

Any reasonable person must admit that such a false-pretense system of concealed profits will suffer a blight when the fair and square individual retailer is given a chance to show that he makes only a fair profit on all the goods he sells. Any reasonable person must see that a fair price on all goods will mean lower prices to consumers, when total purchases are considered.

Nor is that all. The resale price control of prices on standard goods as permitted by this measure will mean in general a lower price on these standard goods themselves. Such a system of merchandising will mean more value for the dollar spent by every American, whether it is spent for unidentified or trade-marked products.

The manufacturer of a competing trade-marked product bends every energy to get the price down, because the lower the price the wider his market. To-day he must cover his costs of distribution, and every attempt to demoralize the market by price cutters means an expenditure of money. If he tries the agency or consignment or refusal to sell system, he must pay the cost, which is very high compared to the contract plan. A widespread war on his prices means a lowered demand and lessened production. Give him a chance to secure uniform stable sale of his product on its merits and he will be able to reduce his price. That he will do so is guaranteed by the inescapable fact that his competitors will take his business if he does not do so.

Then, too, the individual manufacturer to-day is forced to fix his standard price in the knowledge that the price cutters will use it as a bargain bait. He must be able to make a price to the independent dealers, without whose support he can not live, so that they will be able to compete with the price cutter and still make a living profit. That means varying prices ranging from those of the dealer who meets the chain-store price to those of the dealer who will sell only at the standard price, so called.

When that manufacturer has the right to protect his price by a resale price contract he will make a real standard price and it will in many instances be lower than any cut price offered to-day by those who do not desire to sell the product but only to use it as a spider-web bargain.

Instead of the consumer being angered by higher prices than he has been paying for the well-known and greatly approved articles, he will be gratified by a lower price with the further benefit that he is paying the same as everyone else pays and need not fear discrimination in the price. The prices of automobiles have been lowered continuously under price protection. The same will be true of these other trade-marked goods sold on the same system.

This bill aims to prevent an unfair and vicious trade practice which defrauds the public. That practice does especial damage to the independent manufacturer of standard goods, his distributors, both wholesale and retail. We have a duty to take into consideration the injuries done to these business men, but that alone is not the primary purpose of this bill.

Show me cutthroat, jungle competition and I will show you cheated and robbed customers. Along with that kind of business there go false weights and measures, short-weight parcels, adulterated products, fake bargains, even fake adding machines which add in a fixed amount without having it appear on the printed invoice slip.

Show me cutthroat competition and I will show you an irresistible trend to merger and monopoly. Combinations make the outstanding issue in business to-day. Why is it? Not because old-established firms want to lose their distinctive identity and name, which has been a matter of pride to them. It is because cutthroat competition threatens their very existence, and in self-defense they yield to the pleas of the merger makers.

ANALYSIS OF THE BILL

Let me analyze this bill briefly. There has been so much misinformation spread broadcast about it that I want to deal with it exactly as it is—a straightforward, clear-cut provision for the accomplishment of a worthy purpose.

Let us examine its terms just as they stand, stripped of all misinterpretations foisted by those with ulterior purposes.

The first section provides for the legalization of a contract between the vendor and vendee which stipulates the resale price of a trade-marked, identified commodity which is in fair and open competition with commodities of the same general class produced by others.

The contract must be a voluntary one, and there is nothing mandatory in the bill. Only those manufacturers and dealers who desire to cooperate for the protection of a standard price will use this contract. It only applies to articles which are named and identified and does not deal with bulk and unnamed goods.

Manufacturers who have a monopoly of any class of products may not use this contract. Every provision of the anti-trust laws apply to them after the passage of this measure just as they did before. There must be fair and open competition between manufacturers producing similar articles.

The legalization of the agreement between vendor and vendee only seems to have led some to believe that only one agreement is permissible and if the manufacturer sold to the wholesaler with agreement as to resale price, no agreement with the retailer is possible.

Such is not the meaning of the section. Contracts between vendor and vendee as to resale price are legalized. Where the producer sells direct to the retailer, the one agreement covers the case. Where the producer sells to the wholesaler, who in turn sells to the retailer, there are two contracts each equally valid.

There need be no specification in the first contract as to the succeeding contract. The wholesalers are just as anxious as the producers to prevent destructive price cutting on identified goods. They will eagerly make the agreement with the retailer, as between vendor and vendee, specifying the resale price.

If any particular wholesaler attempted to nullify the purpose of his agreement with the producer by selling to "price cutting" retailers, the producer would exercise his undoubted right to refuse to sell further to him.

This provision is not a futile one. It will accomplish the purpose intended and that purpose is to permit the vendor of a standard article, identified and guaranteed to the users, to agree with those who distribute such goods as to the price at which they shall be resold.

Mr. COX. Does the gentleman understand that vendor and vendee is intended to embrace the terms lessor and lessee. That is important in fixing the definition.

Mr. KELLY. No; the title does not pass in the case of lessor and lessee.

Mr. COX. I do agree with the gentleman's statement that "ownership" is the test of exercising the privilege.

Mr. KELLY. Yes; so that dispute is eliminated and the effectiveness of the measure in accomplishing the result is admitted.

Mr. EATON of Colorado. Will the gentleman yield?

Mr. KELLY. I yield.

Mr. EATON of Colorado. Why did you strike out of this bill which we have before us the very paragraph which covers that point and leave it in question?

Mr. KELLY. I am glad the gentleman asked that question. I did not strike it out. That amendment is offered by the committee, as the gentleman will see by referring to the bill I introduced. I should be glad to see it restored, but I have contended and do contend that the omission will have no practical effect. Let us look at section 2.

Mr. NELSON of Maine. Will the gentleman yield?

Mr. KELLY. I yield; although the gentleman would not yield to me.

Mr. NELSON of Maine. Does the gentleman mean to tell the Members of Congress——

Mr. KELLY. Will the gentleman state his question without any preliminaries?

Mr. NELSON of Maine. Can the manufacturer make a trade with the wholesaler with the understanding that the wholesaler, in his turn, is to sell at a fixed price to the retailer, without transcending the terms of the Sherman Act?

Mr. KELLY. Of course; that is the purpose of this bill. We are endeavoring to correct what we believe to be, in the words of Justice Brandeis, an "erroneous" decision of the court. Under this bill the manufacturer can refuse to further supply goods to a wholesaler who does not cooperate for the protection of the good will of his product.

Mr. NELSON of Maine. Will the gentleman yield further?

Mr. KELLY. Yes; but do not take all my time.

Mr. NELSON of Maine. The wholesaler, by his contract, agrees to sell at a certain price?

Mr. KELLY. Certainly. That is the purpose of the bill, and the gentleman should understand that.

Mr. NELSON of Maine. But where can you obtain legal sanction for a wholesaler, with an understanding with the manufacturer, to go on and sell to the retailer under a contract that they shall sell at a certain price?

Mr. KELLY. Has the gentleman understood this question so slightly that he does not know that in this bill we propose to give legal sanction to that agreement. Unless that were necessary by declaration of Congress this bill would not be here. Now, let us analyze section 2 and the others in the measure.

Section 2 provides for certain specific provisions that shall be included in every such contract, if they are to be valid. All purchasers from the vendor for resale in the same city or town must be granted equal terms as to purchase and resale prices.

Of course, that would be in force whether written in the bill or not. The manufacturer who uses this contract is very vitally concerned in a uniform price for his widely advertised product. He also depends in vital degree upon the good will of his retail distributors. It is absurd to think that if he is given the opportunity to protect his good will he will act so as to destroy it.

Under this bill he will announce his prices according to the quantity purchased. All those who buy will have similar prices for similar quantities and under similar conditions. As to the resale price, that will be the same, not only in the same city or town but in the entire general territory.

Every contract must also provide that the dealer may sell the goods without reference to the stipulated resale price where he is discontinuing dealing in such commodity or in disposing of seasonal goods, or if he notifies the public that the goods are damaged or deteriorated in quality, or if the business is in the hands of a receiver, trustee, or officer of any court.

These provisions show excessive caution, but they should certainly convince any doubting Thomas that adequate safeguards are provided. These provisions and many others for the protection of the dealers will be included in every contract. Remember that the vendor of these goods depends absolutely for success upon his goods being sold to the public. He and his competitors are striving to sell competing goods. They must satisfy the buyers and their own distributors.

There will be provisions in these contracts that the goods may be offered to the manufacturers at the price paid for them, and if the manufacturer waives his right to buy the goods may be sold at reduced prices. The contracts will be competitive and every practical contingency will be met by these business men honestly seeking the same end, the sale of reliable goods at fair prices to the public.

Section 3 provides that no validity shall be given any agreement between producers or between wholesalers or between retailers as to sale or resale prices.

Of course, the whole purpose of this bill is to prevent such agreements. The bill in operation will stimulate real competition between producers and between wholesalers and between retailers.

It permits fair cooperation between an individual manufacturer and his own distributors in the sale of an identified product in whose good will all are interested. It will help to prevent the present vicious competition of one product against itself, forced by predatory price cutting.

If Congress will not legalize this fair cooperation, then in all justice it should permit individual business men to combine for the purpose of doing by agreement exactly the same things that are now done by thousands of different units under one ownership. If a chain-store system is permitted to have a hundred stores in the same city, all acting in the same way, then a hundred individual merchants should be permitted to act together.

We are not asking that in this bill; we are definitely prohibiting it. But you may be sure the present unjust and intolerable situation will not be permanently continued.

Section 4 defines the term "producer" and declares that the term "commodity" means any subject of commerce.

This latter definition has led to some confusion in that it is pointed out that necessaries of life might come within its terms. There should be no confusion if the bill is understood. Only those articles which bear the trade-mark and identifying brand of the producer and only the articles produced in fair and open competition can be protected under agreements authorized.

No matter what the product may be it must be sold in competition not only with trade-marked goods of the same class but with unbranded goods of the same class. Let a producer establish his price too high and the public will not buy, but simply turn to competing goods.

Soap is a necessity of life, and some manufacturers control the resale price of their brands by the expensive, cumbersome system of salesmen selling direct to retailers, who report the price cutter. They name their established price at their peril, for a hundred other makers know that price and lower it in competition.

Breakfast food may be regarded as a necessity of life. The same thing applies. There are more than a hundred producers of breakfast food in the hottest kind of competition for the favor of the buying public. With the right of the individual maker to control the price of his own product, he is compelled to come out in the open with his price. Not harm but only benefit can come to the public from such frank and straightforward business policy.

There is no need to theorize about it. Other countries have the legal right to establish resale prices on all standard goods, sometimes even by notice printed on the package, and no injury has been done.

Fair competition is the rock on which this principle is builded, and if we refuse to trust it we must of necessity go to Government monopoly. Not yet is America ready to take that step in the conduct of a naturally competitive business, such as the selling of ordinary merchandise.

WHAT THIS BILL IS NOT

Mr. Chairman, judging from some of the statements made about this bill, it is just as important to know what it is not as to know what it is.

It is not mandatory legislation, and no manufacturer or dealer is obliged by this act to do anything. Only when the individual manufacturer and his own distributors believe that their own interests and that of their customers will be served by price protection will the agreement authorized be made.

It does not apply to bulk and unnamed merchandise. Since the retailer selling such products is alone responsible for them and sells them on his own good will he may make any price he pleases and stand responsible to his customers. The protection here provided is only for those who identify their goods and put their good name and good will back of them as a guaranty of value received to the user.

It does not prevent a dealer from selling all goods not covered by his own agreement at cost or less than cost or from giving them away if he chooses. It only makes possible the agreement that he will not do so on a certain trade-marked product specifically covered in the agreement.

It does not permit agreements between manufacturers nor between wholesalers nor between retailers, but specifically bars such agreements.

It is not an attempt to abolish competition between retailers. It will increase competition in service, choice of goods, quality of products. It does stake out one area and provide that in it there shall be an opportunity to enforce fair competition and prevent unfair trade methods.

It is not a new and revolutionary idea in business. It was a universally conceded right up to 1911. It is now a right guaranteed by the laws of many States and upheld in many courts. There is no civilized country in the world, with the exception of the United States, where such a contract is not held good in courts of justice.

It does not give any unjust privilege to any manufacturer. He makes the goods and can sell them or withhold them as he chooses. When he chooses to sell them in the face of competition from other makers of the same kind of goods, it is simple justice that he should determine the price and stand or fall on the comparison of that price with others.

It does not give an independent dealer any unfair advantages. He must sell goods of all kinds, bulk and trade-marked, identified and nameless, in competition with other retailers. He has a right to be assured against deceptive practices in identified goods and prove his right to serve his community on a fair and square basis.

WHY IS SUCH A LAW NECESSARY?

The answer is that it should not be necessary, for it is simply the statement of a self-evident right of independent business. During all our history the maker of named and identified goods had the right to lay down the requirements in the sale of his goods to their users. He could sell them or not just as he chose. He could sell them in his own stores at any price he pleased. He could sell them through mail orders and name his own price. He could appoint agents and determine the selling price of every unit sold. He could consign goods to any number of dealers and control the price of the last product sold.

There is nothing shocking about any of these things, is there? Well, every one of them is good to-day and has the judicial blessing of every court in the land, including the Supreme Court of the United States. All of them are methods of maintaining a uniform price to the consumer. The most outstanding businesses in the country and those which have brought the greatest benefits to the American people have been operated strictly through these methods.

Until 1911 the manufacturer could reach that same end of price uniformity and protection by the simplest and most economical of all methods—agreement with independent wholesalers and retailers who are already established.

In that year the Supreme Court went into lawmaking on this question. I mean just what I say—the judges made a law of their own. Congress never directly or indirectly legislated to prevent an independent competing manufacturer of branded goods from agreeing with his own distributors as to the resale price of the product.

The Supreme Court singled out that one method and in effect said: "We hereby declare that it shall be unlawful for a manufacturer of trade-marked articles to maintain a standard price by agreement with his distributors." The court pointed out, in effect, that the manufacturer must protect his vital interest in his own name and product by establishing stores or agencies or mail-order and consignment systems. "If you undertake to distribute your goods through the regular channels of wholesalers and retailers," said the court, "then we declare that you have lost all interest in your goods as soon as they are on the dealers shelves. If they cut the price ruinously or raise the price ruinously, you must grin and bear it. If such practices destroy your business, it is highly regrettable, but there is no recourse. It is our law."

That is the only reason this law is necessary. It requires a congressional law to restore a right taken away by a judicial law.

We are in exactly the same position as though the Supreme Court should to-morrow declare that it is unlawful for a manufacturer to sell goods through the United States mails. We should have to pass a law through congressional action specifically restoring that right.

Therefore those much-perturbed persons who rail against the enactment of many laws should not shake their gory locks at us. We are not trying to enact some new-fangled notion into law. We are forced to act if a previously universally recognized right is to be restored to the independent business men of America. We are simply standing true to the traditional system of this Republic—that lawmaking belongs in the lawmaking body. If the court interprets a law, let it stand only so long as Congress agrees that it is correct. If the court declares public policy of its own motion, let it stand until Congress ratifies or changes it.

HOW JUDICIAL DECISIONS CONFLICT

Mr. Chairman, let us take a good look at the present situation as brought about by Supreme Court decisions. If we put two cases side by side, we may see it more clearly.

First, there is the Dr. Miles Medical Co. *v.* John D. Park and Sons Co. (220 U. S. 373, 1911).

Here on one side was a small manufacturing company located in the small city of Elkhart, Ind., in severe competition with a hundred other makers of similar preparations. This concern had a plan of protecting its prices and its distributors through contracts which specified uniform prices.

The Supreme Court, by divided decision, declared that such a plan was in violation of the Sherman antitrust law.

Second, there is the case of United States *v.* General Electric Company et al. (272 U. S. 476, 1926).

Here on one side was a great manufacturing concern with unlimited capital and mammoth plants in many sections of the country. This concern had a plan of protecting its prices and its distributors through agreements that the dealers were to become agents for the sale of the products at prices specified by the company; title was to remain in the company until the goods were sold, when it was to pass directly to the consumer. This system of distribution extended over the entire country and embraced more than 30,000 dealers, who were required to guarantee the accounts when the sales were made, be responsible for all goods damaged or destroyed, and pay all expenses of sale and distribution.

The Supreme Court in this case decided that this system of contracts for the maintenance of price was legal and that a manufacturer does not violate the common law nor the antitrust laws by fixing the price at which dealers transfer title to the goods to buyers.

The variation in facts between the Doctor Miles case and the General Electric case is so attenuated that it can not be seen without a microscope. Yet the result was totally opposite decisions.

Is it any wonder that the American Bar Association at its last session stated in a resolution:

On the one hand is the unorganized body of consumers who conceive themselves to be the victims of apparently increasing

power of great industrial units, and on the other is the unorganized body of smaller producers whose resistance to the competitive power of the great producer and its own internecine competition is steadily growing weaker and yet is utterly at a loss to know what protective measures under the Sherman Act it may take to save itself from destruction. These groups demand protection, though as yet they only dimly realize that the economic theory which the Supreme Court has adopted in determining what constitutes unreasonable restraint of commerce foredooms the small producer to destruction and the consuming public to the evil, if so it be, of the great producers.

Here is a clear-cut statement by the great organization representing the legal profession of this country of a situation which can be remedied only through such a measure as I am advocating here.

PROFITLESS PROSPERITY IS DEPRESSION

Mr. Chairman, we are in a business depression which affects every American. There are many theories given to explain the reason for such a condition. One reason which underlies all the theories is to be found in that condition we termed for a period of two years "profitless prosperity." For a time the volume of business kept up even though profits were vanishing. The end could only be the vanishing of prosperity.

The American business system is built on profits. Business will not start without hope of profits and it will not continue without the realization of profits.

It does not help matters to say that we can conceive higher motives than the profit motive. The fact is that under our present system the one predominant urge to business activity is profits. That is the dynamic center of every business enterprise. Every business man, whether he likes it or not, is obliged to make profits his first aim, for if he does not he can not remain in business.

The prosperity of America and of every individual in it depends on profits. The consumer has no source of income except industry and industry depends upon profits.

Foster and Catchings, the new economists, in their book Money have this to say:

It is as important for buyers as it is for sellers that business should proceed, year in and year out, at a profit. Sometimes "sacrifice sales" involve no sacrifice at all. Sometimes the community makes the sacrifice. Ordinarily, if goods move at prices that injure necessary business concerns, the people as a whole pay the penalty. To have merchants really selling out below cost is not for the long run interest of consumers.

Calvin Coolidge, in one of his recent editorials, expressed a great truth when he said:

Prosperity does not come from cheap goods but from fair prices.

A fair price is one which covers the cost of production and also a reasonable profit for those who handle the goods from maker to user.

When we were in the midst of that so-called "profitless prosperity" W. T. Grant, head of the Grant Department Stores, declared that from three to five billion dollars worth of goods were annually being sold at less than the cost of production.

It did not take long to reap the harvest of that sowing. Any sensible man, viewing the results should admit that "profitless prosperity" is a contradiction in terms. You might as well say a thing is black-white.

When profits disappeared the manufacturers could not continue on that basis. They laid off workers. Retailers, forced into a cutthroat competition, which brought prices to a point lower than actual cost, went into bankruptcy. Their clerks were out of jobs.

These unemployed ones had no money with which to purchase goods. That meant curtailed production and unemployment in other factories. Thus the vicious circle widened and to-day every American finds himself within the whirl. Three and a half million men able and willing to work can find no opportunity to labor in productive tasks for the support of themselves and families.

We talk about schemes to set these men to work and I am in favor of any plan that will help. But do not forget that $5,000,000,000 worth of goods, if they had been sold at a fair profit instead of a loss, would have done more to prevent the present unemployment than many of the plans now advanced. Do not forget that when 300,000 independent merchants are put out of business by unfair competition, their employees go off the pay roll.

President Coolidge, in his editorial, went on to say: "A small number with a fixed income may benefit from cheap goods sold at a loss, but the country as a whole is always injured."

Mr. Chairman, he is still characteristically cautious. Even those with fixed incomes can not permanently profit by nation-wide depression. If that income is from stocks, the dividends fail; if from rentals, there must come reductions; if from salaries, there must come readjustment.

The price is the thing. The whole function of price is to bring about the production and distribution of goods. There is a right price and a wrong price. A price unduly high interferes with the movement of goods into consumption. A price below cost means that there will be no production.

The right price can best be determined on identified, trade-marked goods, for on these the buyers can make final decision. Business in these goods is the most democratic system on earth. Every dollar spent for one of them is a vote for future production. No vote is thrown away; every one counts. In electing a political candidate many different issues involve confusion, but the consumers' dollar is a vote, effective and direct.

There are many competing brands in the same class. The quality and the price are vital factors in success or defeat. The maker knows that if he sets his price at a point to produce undue profits he will certainly forestall all profit by discouraging sales. He knows that his price must cover cost of production and a reasonable profit for manufacture and distribution, or there will be no products made.

Under such circumstances the maker of the goods has a right to a decision on their merits. We all agree that no one should adulterate his goods and lessen the quality. We should also admit that no one has the right to juggle his price to a point at or below cost and thus injure the good will of the goods and their full distribution.

The habitual practice of selling high quality, widely advertised, identified goods at a loss in order to sell other goods at excessive profits was a feature of the so-called "profitless prosperity" and helped to bring on depression. Certain great chain systems built their business on such a practice. They cut prices to crush competition, and their seeming success deluded many business men into the belief that volume of business is everything.

A fair price helps everybody. Those buyers who run from one cut-price store to another looking for goods sold at less than cost are hurting themselves in the long run. It is better to pay a fair price for all goods and have a pay envelope on Saturday night than to be out of a job, no matter how many cut-price bargains decorate the store windows.

Practically every way of making a living in America depends upon profits. No person or group can escape that fact, and the sooner all act upon it the better for America.

The price of tea was cheaper in the colonies after the passage of the stamp act than before. But loyal Americans pledged themselves not to buy at the bargain prices because of a great principle which was more important than a bargain. Americans of to-day will refuse bargains when they come to understand they are a part of a cutthroat competitive system which leads to the traps of depression and merchandising monopoly.

PURPOSE OF THE BILL

Now, Mr. Chairman, what is the purpose behind this bill? It is solely to remedy a crying evil in the retail trade of this country, one for which not a single good reason can be advanced. That evil is the use of standard, trade-marked, identified quality products as "bargain bait" at ruinously low prices in order that the public may be deluded into the belief that all goods are sold at the same low prices.

The idea that such a practice benefits the buying public permanently is a delusion. It is a myth, like any easy-to-believe assumption which has been accepted in place of an

analysis of facts. It was easier for the ancients to believe that the sun moves around the earth than to work out the true mechanics of the solar system. It was easier to believe that the world is flat than to believe that there are people who live on the underside of a globe.

Let us analyze that so-called "bargain" just a little. Webster says that a "bargain means a transaction involving good or bad consequences," so there is good authority for saying that a bargain is not always what it seems.

Fake bargains have been known as long as men have bought and sold. We read in Ecclesiasticus:

A merchant shall hardly keep himself from doing wrong, and a trader shall not be judged free from sin.

As a nail sticketh fast between the joining of the stones, so doth sin press in between buying and selling.

Perhaps the greatest step toward honest business in the past thousand years is that system developed in our own times of placing a trade-mark or brand on goods so that they can be identified. The man who puts his name on his product, stands back of them with every dollar he has and guarantees them to be as represented or money refunded, is a public benefactor. He makes it possible for the buyer to protect himself.

Now, of course, the maker of these trade-marked articles knows that his entire success depends upon the good will of the public. The product must be of such quality and at such a price that the purchaser will continue to buy it and find it satisfactory. The maker therefore strives for standard quality and standard price since each factor is vital to good will.

However, there are great organized combinations engaged in selling goods who have discovered that these standard-quality and standard-price articles make fine bargain bait. If an article has been widely sold at 50 cents and the buyers have found it good, then if the price cutter advertises it at 37 cents, the purchaser is sure to feel that he has had a great bargain.

That one bargain is a fact, but it is modified by other facts. The cut-rate dealer is in business to make profits not to sell goods at less than cost. If he loses money on some goods he must make it up on other goods at prices excessively high.

Therefore his whole merchandising system is built on the idea of selling as few of these cut-price standard goods as possible and as many nameless, big profit goods as possible.

HOW CUT-RATE SYSTEM WORKS

Mr. Chairman, my task is to prove that statement. I must prove that these so-called bargains are not made in good faith, but for the ulterior purpose of selling other goods which will yield profits sufficient to satisfy the price cutter. I must prove that price cutting and profiteering go together.

I can not ask you to take my statement on that. I will call to the stand chain-store experts who have built the system.

First, let us hear William J. Baxter, of New York City, who claims to have aided in the establishment of 300 chains. He is now the high-salaried director of the Chain Stores Research Bureau. Speaking before the National Association of Manufacturers at the Waldorf-Astoria Hotel October 23, 1928, he said:

To me there isn't any question as to the advisability of any retail store if it can sell some nationally known product at cost to get the crowd. * * * A consumer will go to a grocery store and she is willing to pay 55 cents for steak, whereas it might be sold for 52 or 50 cents elsewhere, if she at the same time can purchase Campbell's soup or some other package goods at cost. * * * Scientific retailing means studying the blind articles in the store and selling them at full prices. But what we call open articles, the ones that the consumer can go from store to store and compare, selling them at low prices.

That statement is frank enough. It defines scientific retailing in chain-store parlance. On a 5-pound steak you can take 25 cents in excessive price if you give your customer 1 cent on a well-known trade-marked can of soup. A steak is a blind article—that is, it can not be compared—and on these articles you recoup all your losses on the trade-marked goods, with a high profit on both transactions.

Webster says that a blind is "something to mislead one or to conceal a covert design; a subterfuge." Mr. Baxter uses the proper name for the "full-price" articles used in this practice. And, of course, there is no standard price on these "blind" articles, so the "full price" is the very highest price that can be extorted from the buyer.

Now, let me call J. F. Gallagher, of the Gallagher Chain Drug Stores. His statement is published in a booklet I picked up in the advertising department of the National Cash Register Co. It is stated in the preface that Mr. Gallagher once conducted an old-fashioned, ethical drug store. Then he saw the light and made a complete change in his methods and now has a money-making chain. In this booklet Mr. Gallagher explains his complete success, and I will quote him:

A loss leader is an item which is sold without profit but which draws prospective customers. It doesn't do any good to sell an article for 7 or 8 cents if it costs 9 cents. You have to turn that loss into a profit maker through an association of sales by selling some other profitable article. That is merchandising the loss leader successfully.

The need for trained salespeople and the importance of showing them what merchandise really makes the profit in the store was impressed upon me forcibly one day as I watched a clerk handle a transaction. He was trying to sell a customer two bottles of Castoria for 46 cents. He was using salesmanship and succeeded in selling the two bottles. After the sale had been completed and the customer had left the store, I called him aside and asked him if he knew how much Castoria cost us. He said, "No." I said, "It costs us 23 cents a bottle." He realized his error and the waste of effort in selling two bottles. Right then I realized the importance of teaching my salespeople. The only way our chain business can excel the neighborhood store is by reason of the quality of its salesmanship. In merchandising the real difference between a chain store and an independent store is that the chain stores train their salespeople and, as a rule, the others do not.

Mr. Chairman, if that is the only superiority of the chain store, it does not deserve to live. Involved in such so-called "scientific" salesmanship is a great deal of rascally salesmanship.

All kinds of substitution enters into the system. When the customer asks for a standard, trade-marked article, the clerk urges a private brand. Or there is a special price on some unknown product and the customer is urged to give it a trial. It carries a much higher profit than a standard article. Sometimes it is announced that the store is out of the well-known article asked for, but here is something "just as good." Of course, the substitute is a high-profit item.

Sometimes the price on the standard article will be raised much higher than the cut price at which it is usually sold, and the private brand is urged as a better buy on account of its lower price. The buyer, annoyed at the juggling in price, is likely to be an easier victim.

INSTANCE OF "SCIENTIFIC" SALESMANSHIP

It is important to keep in mind that the clerk must sell these big-profit unidentified or private-brand goods or he will be fired. Just what effect that has upon an employee, who must have a job in order to live, can be easily imagined.

Perhaps it does not often lead to assault upon the customer, but it has even gone that far. Let me read this article from the Pittsburgh Post Gazette in its issue of June 11, 1930. I quote:

James L. McInerney went into a down-town drug store Sunday for cigarettes, some peppermints—and nothing more. He had his arms filled with bundles and couldn't carry more if he got them for nothing.

This particular drug store had several bargains on Sunday, and Ralph Sickman, 211 Knox Avenue, the clerk, tried to interest McInerney in shaving lotion, powder, soap, and other things necessary, so Sickman said, to a man's beauty. One of these was a razor. It might have been a very fine razor, but the razor McInerney had suited him and he positively did not want another one.

The clerk talked up the merits of his razor and did not produce the peppermints. McInerney, who was known as the hardest-boiled police lieutenant the hill district had in years gone by, became a little angered. He noticed the clerk had a mustache.

"Could this razor shave your mustache off?" he asked.

The clerk became indignant. One word brought on another and Patrolman Andrew Piergalski was called in, McInerney said, to remove him.

Here the stories differ.

Piergalski said McInerney became abusive. McInerney said he was attacked without provocation. At any rate, McInerney was

arrested on a disorderly conduct charge. He had to be taken to the Allegheny General Hospital to have seven stitches put in a lacerated scalp.

In Central Police Court yesterday Magistrate Leo Rothenberg reserved decision to weigh the stories of McInerney, Piergalski, and Sickman and consider the plea of Attorney Ralph Smith, McInerney's counsel.

Mr. Chairman, if a "hard-boiled" police lieutenant suffers so much from this "scientific" salesmanship, I shudder to think of what might befall weaker customers.

Substitution, adulteration, misleading and false advertising go hand in hand with "cut prices" on standard, widely known goods. It took 20 years to pass the pure food law to protect the people against such evils on one class of products. It has taken almost as long to get this bill under consideration, but when it is enacted it will be the "pure food law of business."

Long ago John Ruskin summed up the practice of substitution when he said: "There is hardly anything in the world that some man can not make a little worse and sell a little cheaper, and the people who consider price only are this man's lawful prey."

And this substitution trickery in retailing means that if every customer of these "cut-price" stores would for 30 days buy only the standard, trade-marked goods at the cut prices advertised, every salesman in the stores would be out on the streets looking for a job. If the customers would continue that policy for 90 days, the stores themselves would be obliged to close their doors.

FOLLOW ADS, AND RUIN STORES

You will often see in the newspapers huge advertisements issued by chain drug and grocery systems. Every item is a cut price on a nationally known, trade-marked article. As far as the public can see, those goods are all the store has to sell.

Yet, if the buying public held only to the purchase of those articles, the result would inevitably be the bankruptcy of the stores.

Is there not something vitally wrong with a business which depends on such a method. Is it not worth while to look behind those bargains?

Does any fair-minded American want to feel that his purchases in accordance with published invitations will mean the dismissal of the clerk who serves him and the destruction of the store he patronizes?

Of course the average customer buys other goods than the advertised bargains. The continued existence and growth of these price-cutting stores proves that. The customer is brought into the store by the bargain bait and then runs into the "scientific salesmanship" which must sell other unstandardized, nameless goods at prices high enough to cover all the losses on the "bargains" and more besides. The huge general profits of the chain systems, the huge salaries to executives, must all come out of the consumers' dollars.

Suppose one individual is shrewd enough to play this game as it should be played and buy only the "bargains." Then his neighbor must hand over in excessive profits sufficient money to make up the loss on the bargains. I will not believe that the average American wants his bargains to be paid for by his neighbor. I believe the average American wants to pay a fair price on all his purchases.

THE CHAIN-STORE PROBLEM

Mr. Chairman, this practice in unfair competition has many results, but one of them confronts us with a challenge we can not evade or deny. It is the rapid centralization of retailing in the hands of great semimonopolistic corporations. Price-cutting chains and price-cutting department stores inevitably drive the independent out of business.

They can stand losses in one unit or in one department over a long period of time and still make huge profits on gross business. The independent business man can not meet these predatory cut prices, for he has no other departments or stores in which prices can be raised to balance the losses on standard goods sold at cut prices.

There is no use saying that a vast chain of stores under one management can not crush any individually owned store; they have done it and are doing it every day. They are making it impossible for the individual proprietor to exist once they have decided to put him out. They play with price as a gambler does with dice and the public is duped to their own injury.

Of course, there are those who say that the destruction of the independents is due to their own inefficiency, not unfair methods on the part of great price-cutting establishments.

Carveth Wells in his book, Six Years in the Malay Jungle, declares that the Malays believe that the crocodile's method of attack is to sneak up on the victim and by a sudden swing of his powerful tail knock him into the river. "He does not tear you to pieces, but drags you under the water, pokes you in the mud at the bottom of the river, and drowns you. He does not injure you in any other way. Then, according to the Malays, he rises to the surface of the water, looks up to heaven, and calls on God to witness that he is not drowning you—that the water is."

We are willing to take a chance that the little independents will not be drowned if we can prevent that sneaking-behind-the-back blow from the tail of the chain-store crocodile.

President Hoover condensed an entire volume into one paragraph in his speech to the American Federation of Labor convention, at Boston, October 6, 1930. Here is what he said:

> One key to the solution seems to me to lie in reduction of this destructive competition. It certainly is not the purpose of our competitive system that it should produce a competition which destroys stability in an industry and reduces to poverty all those engaged in it. Its purpose is rather to maintain that degree of competition which induces progress and protects the consumer. If our regulatory laws be at fault, they should be revised.

While the President was referring specifically to the coal industry, the conditions in the retailing industry, far greater than coal, show the same evils of destructive competition. The remedy for the evils is in the bill under consideration.

SHALL LAW OF JUNGLE RULE RETAILING?

Mr. Chairman, what is this theory of unrestricted competition between retail dealers? It is simply that countless thousands of retail merchants shall be set at each other's throats, with certain destruction to the great majority, in order that some people may get some goods at less than cost.

That is brutal and inhuman competition, which injures the buying public, while inflicting special damages to honest business men.

Business competition in America must be made something finer than a jungle warfare, where the strongest and most unscrupulous destroy the weaker and more scrupulous. We have rules in prize fighting which require fair competition. Business is vastly more important than boxing.

Price cutting on standard goods is to-day the legalized weapon for annihilating competition. Price standardization, as provided in this bill, is the legalized weapon for the fair protection of independent business.

This bill is constructive, not destructive. The best friend of business is the man who tries to end abuses in business. This bill is a plank in the better-business platform; it is a stepping-stone to more civilized merchandising.

GROWTH OF THE CHAINS

Mr. Chairman, we are hearing a great deal about the menace of chain stores. State legislatures are passing laws which put heavy taxation upon the additional units. Candidates for public office are making opposition to chain stores their leading campaign issues. From a broadcasting station come nightly attacks upon this chain system of business. Periodicals are being issued in many States with "Down with chain stores" at their mastheads.

In my opinion, the greatest weapon in the hands of these stores for the destruction of independent business men is the "cut price" on standard goods. With that bludgeon of unfair competition in their hands they can ruin the proprietor of any individual enterprise, no matter how efficient he may be and no matter how valuable the service he may render his community.

This measure undertakes to take this weapon out of the hands of business pirates. We propose that the public shall be protected against this trickery and duplicity. We propose to permit independent manufacturers and distributors to build business on the principle, "A fair price, no more and no less."

Of course, there are vital factors of community welfare involved in the chain-store system. In 1920 the chain stores did 4 per cent of all the retail business in the United States, while in 1930 they did about 22 per cent. More than $1 out of every $5 spent by the public goes over the counters of the chains. In New York City and Philadelphia the chain grocery stores do 70 per cent of all the grocery business. In Atlanta they do 64 per cent. Taking the country as a whole, the grocery chains do 40 per cent of all the business.

The drug chains do about 25 per cent of all retail drug business. In 1929, 1,124 new units were added to the drug chains, more than the entire increase during the previous three years.

The Commercial Service Co., of 171 Madison Avenue, New York City, under date of May 1, 1930, issued the following compilation of chain-store systems now in existence:

Parent companies and units in chain-store systems

Chain class	Number of parent companies	Number of units
Auto accessories	68	691
Auto tires	59	972
Bakeries	150	1,348
Books and stationery	35	464
Cigars and tobacco	74	3,390
Cleaners and dyers	152	908
Confectionery	117	914
Dairy products	18	452
Department and dry goods	865	8,392
Drug	665	5,075
Electrical	33	475
5 cent, 10 cent, and $1 variety	345	6,486
Florists	41	144
Furniture	173	961
General stores	307	1,971
Gift shops	5	18
Grocers	747	58,481
Hardware	206	970
Hats and caps	55	741
Hosiery	67	457
Hotels	163	937
Jewelers	52	1,125
Lumber yards	82	859
Luggage and trunks	7	30
Meat markets	455	2,343
Men's furnishings	136	738
Men's clothing	427	3,765
Millinery	152	1,565
Paints and wall paper	29	340
Pianos and musical instruments	46	427
Radios	81	664
Restaurants and lunchrooms	353	3,292
Shoes	465	6,903
Sporting goods	12	106
Tailors	19	118
Women's ready-to-wear and furnishings	435	3,116
Total	7,346	120,452

There is no need to quote further statistics. Here is a tremendous merchandising change. What is its effect upon the community?

If it has an injurious effect it should arouse the interest of every American. After all, every American problem brought into Congress—tariff, internal improvements, transportation, national defense, welfare of workers, legislation for women and children—are simply parts of a great attempt to make the home communities more secure and prosperous and more desirable places in which to live and work.

DISPLACEMENT OF INDEPENDENTS

The first thing to consider is the displacement of hundreds of thousands of independent proprietors by giant corporations with their myriads of employees who work for wages. That means the transformation of the middle-merchant class into hewers of wood and drawers of water. The Supreme Court of the United States once said:

> It is not for the prosperity of any country that such changes should occur which result in transferring an independent business man, the head of his establishment, small though it might be, into a mere servant or agent of a corporation selling the commodities which he once manufactured or dealt in, having no voice in shaping the business policy of the company and bound to obey orders issued by others.

It must be admitted that if independent proprietors are displaced by hired men who may be transferred from one town to another on a few hours' notice, the community has fewer men with a real stake in the community, who spend time and money in welfare projects.

The independent merchant has always been the backbone of public movements and public-welfare projects. In every community thousands of dollars, aside from tax funds, are put into local betterments of all kinds. The local merchants are counted on for 90 per cent of these contributions. They have served on the committees and contributed their time and money to community upbuilding.

The chain-store manager can not take this outside work on his shoulders. He has but one job—to get volume of profit-making sales. His boss is in an office in New York City and scans reports from every community and makes comparison.

The general attitude is that expressed in a letter sent to a Kansas chamber of commerce which was making a drive for a Y. M. C. A. building. Here it is:

> We wish to advise you that we are not in a position to make a subscription to the fund. We have a basis for handling our charity account according to the sales we receive in the various towns in which we operate. We arrived at this basis after long years of experience. We have felt, and continue to feel, by maintaining the policy we have of selling merchandise at a fixed price and giving the public the benefit of our vast buying organization and selling them merchandise on not "how much do you get" but on "how much do you give" that we have been real benefactors in the communities in which we operate.

Now, that is a frank statement and presents a viewpoint worthy of consideration. I shall take it up later and consider it at its face value. Just now I want to say that if local merchants are displaced by this chain system, many public-welfare projects in the community will die a-borning.

Not long ago I received a letter with resolutions from an American Legion post in Pennsylvania. These soldier boys asked for the passage of the so-called Kelly-Capper bill. I was somewhat surprised at their interest and wrote asking for information. In reply the secretary stated that for the Armistice Day celebration in the town some $1,500 was needed.

The committee could not get a penny from all the chain stores and the total contributions were made by independent merchants. It was stated that the Legion post understood that the Kelly-Capper bill would help the independent merchants and the members wanted to help the friends who helped them.

MONEY OUT OF COMMUNITY

Mr. Chairman, there is a second consideration. The chain-store system has headquarters in a distant city and the money goes out of the local community. One of the most alarming things in America to-day is the concentration of money in New York City. From every local community the money is siphoned to a great central reservoir. With surplus funds on hand, speculation and gambling are certain. Companies are formed and stocks issued and sold broadcast. The market is manipulated up and down, and in the end the crash comes, injuring everybody except the conspirators who brought it about.

A letter came to me the other day containing this statement:

> The express company has just instituted a service in our county whereby they gather up the funds of a chain-store system in an armored truck for shipment to their New York depository. The chain stores are financially vacuum cleaning our towns.

How does such a system affect the community? The banks in the communities can answer that question. The independent merchant puts his money in the local bank, where it becomes the basis for loans for local improvements. Workers who desire their own homes and need assistance through mortgage, business men who plan improvement and need credit—these depend on local savings and local funds, not on funds in New York City. The money exported by the chain store can never become a basis for community credit.

The good will created by the local merchant through years of honest and efficient service is a bankable credit. Drive him out of business, and the community is just that much poorer.

DESTRUCTION OF COMMUNITY BANKS

The National City Bank of New York has never been known as especially concerned in the welfare of the small communities in the United States. However, in its monthly bulletin for December, 1930, it points out the effect of chain stores on the banks in the local community. Here is the statement:

An epidemic of bank failures in the South and Middle West and a further break in wheat prices have been new adverse factors with which business has had to contend during the past month. So far as the bank failures are concerned, the developments have come as no great surprise, since it has been well known that many banks had gotten into an unliquid condition, partly as a result of the decline in security values but more particularly owing to the fading out of real-estate booms throughout the country. While in a few cases banks of some prominence in their localities have been involved, the suspensions in most instances have been of small banks in rural sections doing business on a limited capital. Everyone realizes now that the banking business was greatly overdone in some parts of the country during and just after the war, and that more banks were started in many small communities than could be supported in normal times. During the depression of 1921 many of these banks went to the wall, while others continued to struggle under a carry-over of frozen assets. Moreover, the last few years have seen many changes in the small towns, not all of which have been favorable to the local banker. Development of good roads and wider use of the automobile, encouraging shopping in the larger centers, together with the growth of chain stores, have given him many problems to meet.

Many Members of Congress have devoted time and energy to the endeavor to help the small banks in the local communities. I suggest that the most valuable service they can perform in that direction is to help us take out of the hands of chain stores the weapon by which they slay the independent business men, upon whose welfare the little bank must depend.

THE CHAINS AND WAGES

There is a third consideration. Chain stores lessen the buying power of the community. The employees of the chain stores, from manager to janitor, are paid less than the employees of independent stores.

In the western Pennsylvana district recently only 19 young men applied to take the examination for registered pharmacist. Generally more than 100 have applied, and a member of the examining board made an investigation. He told me that he learned that the chain-store scale of pay for such pharmacists is from $25 to $35 a week. There were few openings in the independent stores where the pay ranges from $45 to $65 a week.

Little wonder that lads who must have a high-school diploma and then spend three years in a recognized college of pharmacy did not look forward with eagerness to a job in a chain drug store, where every effort they made would more surely prevent their becoming independent owners of a drug store.

The community needs increased purchasing power, not decreased power. If chain-store wages are 25 per cent lower than the independents, the general prosperity is reduced that much. If some one suggested reducing the income of every member of the community by 25 per cent, there would be a chorus of indignation. Such action would mean community demoralization and in the end widespread unemployment and suffering. Then the system that does that in every line it controls is certainly a community liability rather than an asset.

It is a further fact that many State labor departments are finding it necessary to act against certain of these huge chains which violate laws intended to secure fair working conditions.

Not long ago State Labor Commissioner Eugene J. Brock, of Michigan, accused two of the leading grocery chains of repeated violations of the law and denied their requests to employ minors.

After citing the violations Commissioner Brock made the following decision:

In the enactment of Act 285 of the public acts of 1909, commonly known as the labor law, it was the obvious intent of the legislators to protect females and minors in commerce and industry against excessive hours of employment by limiting the number of hours for them, so as not to exceed 54 hours in any one week nor more than 10 hours in any one day.

Further evidence of the legislative intent is expressed in section 11 of Act 285 by providing that the department of labor and industry shall approve only occupations for minors as are not unduly hazardous nor detrimental to health or morals.

In its privilege to employ minors in the stores of the company of this State the company has failed in its obligation to observe the responsibilities placed upon it by the law. In spite of repeated warnings and convictions in court violations continued. Therefore, this department rules that the employment of minors in establishments where they are exposed to hours of employment in excess of the legal limit is considered unhealthful and your request for a ruling to permit the employment of minors is hereby denied.

Mr. Chairman, that the danger seen in these conditions is being realized by labor unions is shown in the resolutions adopted in recent conventions of State federations of labor. Many of the nation-wide chains have been branded as unfair to labor because of their unyielding refusal to permit organization of their employees, either in their stores or in the bakeries and other manufacturing plants which they operate.

The Iowa State Federation of Labor considered this fact as well as other dangers involved when it passed the following resolutions without a dissenting vote:

Continued development of chain stores means monopoly, decreased opportunity for our young men and women to go into business for themselves, driving them to large centers of population. They lower real estate and farm values, without any reciprocal advantages to the citizens of our State.

OUT OF A JOB—NO CREDIT

Mr. Chairman, a fourth feature of chain-store control of retailing comes in for consideration. The chains will give credit to no man, no matter how worthy and reliable he may be. Twenty years ago the worker, who for no fault of his own, lost his employment was tided over by the independent merchants who knew him and trusted him.

During this last period of unemployment workers of this type have had to appeal to charity. No matter if they had spent practically all of their incomes in the chains they received no consideration when the evil days of unemployment came.

One case came to my attention during the past summer. In a small city in Pennsylvania a coal miner lost his job. He had a wife and three children to support, and since he was a patron of the chain grocery he asked for food on credit. This was refused every time the request was made. Finally, the man took a sack of flour and carried it to his home. The manager of the chain store notified the police and went to the house and identified the sack of flour. The officer of the law begged the store manager to let the flour remain and give the man time to pay for it. This was refused on the ground that the manager had no authority and was working under strict orders from headquarters. As a last resort the policeman paid for the flour himself.

One of the best statements of this factor of the situation is contained in an editorial in the issue of the Toledo Union Leader, of January 24, 1930. It is worthy of earnest thought, and is as follows:

One of the preposterous claims of the chain stores as an excuse for cutting prices is the cash-and-carry system of saving delivery cost. It is, however, just a shrewd disguise for denying credit to their consumers. In the larger cities the effect is less conspicuous than in the smaller communities, particularly where the chain stores have driven out the local merchants.

There are times in the lives of the most honest men, particularly those with families to support, when they meet with reverses through poor business conditions, lack of employment, sickness, death in the family, and the like, and when their need of credit is imperative. The local merchant has long recognized their needs in adversity and extended credit liberally. He has dealt with the human side of their lives. He has never hesitated to cooperate with the residents of his community in extending them credit to tide them over the unpleasant situations in which they might find themselves.

But the chain stores' system is one of cold-blooded indifference to the human side of life. Were the family of a man, who might have been a regular customer of the chain store, starving to death, the chain store would not give him 10 cents' worth of merchandise on credit. The chain store code of "cash and carry" practically interpreted means "cut and crush"—cut prices and crush competition—with the consumer holding the sack.

CHAINS AND TAXATION

There is a fifth factor which concerns the community, and that is local taxation. Here is a letter from a business man in Oil City, Pa., in which he says that his local tax bill is $100 for 1 store, while a grocery chain that operates 11 different stores pays only $100 for all of them.

In that one case the community loses $1,000 in taxes. What does that mean? The taxes must be secured, and if it is not secured on business it must be levied on homes. Thus it happens that those who seek to save 9 cents through a cut price on standard goods are helping to assess many dollars on their own property. Those "bargains" are secured at a tremendously high price.

Whenever an attempt is made to equalize taxation and make those multiplied units pay their fair share there is immediate opposition. San Antonio, Tex., increased the assessment on the stores operated by a number of chains. Protests were made at once and Tax Commissioner Frank Busick is quoted in the San Antonio Express of November 27, 1929, as making the following statement:

When our own local merchants are paying taxes on a fair assessment on their stock and fixtures and cash in bank I can't see any merit in the claim of the national chain stores that they should receive special consideration because they have located here.

These chain stores drain our town of every dollar they can get and spend as little here as possible. At the close of each business day they remit their cash receipts to their Eastern owners. In this way they practice systematic tax dodging by never keeping any of their money in San Antonio.

I am also informed that they contribute little or nothing toward any of our civic or philanthropic enterprises in San Antonio. I do not propose to discriminate against chain stores or anybody else, but I do propose to see that these outside concerns pay taxes on a full and fair assessment on their business in San Antonio.

THE MENACE OF MONOPOLY

Mr. Chairman, a sixth factor merits consideration. If the chain-store philosophy is correct, it logically follows that there should be no waste motion at all and one great chain under unified control should sell all the commodities needed by the community.

Whatever else it may be, that program is not yet American. President Hoover summed up what is still the American ideal when he said:

That while we build our society upon the attainments of the individual, we shall safeguard to every individual an equality of opportunity to take that position in the community to which his intelligence, character, and ability entitle him; that we keep the social solution free from the frozen strata of classes; that we shall stimulate effort of each individual to achievement; that through an enlarging sense of responsibility and understanding we shall assist him to this attainment; while he in turn must stand up to the emery wheel of competition.

What shall we say about the present destruction of individual opportunity in American business?

How about the boy and girl who want to grow up to enter in business for themselves? Let the present system continue and they will find the door of opportunity shut in their young faces. They will have only a chance to become hirelings, not even names, but only numbers in nation-wide merchandising systems. Never a chance for them to use their own individuality and enterprise. They will find routing orders for them every day of their lives. They will be told how to arrange counters and display goods, just what prices are to be charged, and every motion will be dictated from a far-away office by officials who are never seen.

This coming generation of business will be wage earners, not proprietors. Their wages will be driven down to the lowest level possible for that seems to be an essential part of this new "efficiency."

Mr. Chairman, the chain-store system is built on concentration, consolidation, and monopoly. Its underlying theory is that control of 100 stores is better than the control of 1. Therefore control of 1,000 is better than control of 100, and so on to the point of complete monopoly.

This is proven by the merger of the smaller chains into larger ones. Behind such a movement stand the bankers, who thrive on floating stock issues to a gullible public.

An eloquent article appeared in the New York Times of December 28, 1930. It is worth perusal by every American who is interested in the preservation of independent business in this land. It follows:

Conversations looking to the merging of minor chain-store systems, or to the absorption of these systems by leading organizations, are being carried on more actively in Wall Street than ever before, according to bankers identified with that form of business. While it has been generally agreed for years that the consolidation of chain-store groups was economically sound, discussions did not make much headway until the present business depression reached an acute stage.

A belief that the chain-store business can be conducted on a more profitable basis in 1931 if the number of independent chains is reduced has resulted in a greater willingness among chain-store executives to discuss mergers. A broad consolidation movement, it is held, would mean less competition for leaseholds among systems operating in the same field, would result in a larger volume of business, and hence make possible advantageous purchases of goods; would reduce overhead costs, and would eliminate costly price cutting.

During the prosperous years before the current pression when chain-store companies were expanding at a rapid rate, bankers seeking to arrange mergers among them found that the executives were usually not in a receptive mood for such proposals. The seemingly unlimited field for chain-store systems, it is said, led their executives to believe that they could expand their chains indefinitely and at the same time maintain their independence. At the end of 1929, however, it had become apparent, bankers say, that expansion would have to be carried on at a slower rate. Many companies, indeed, reversed the trend by abandoning unprofitable stores which they had opened in the boom period.

The expansions in which the chain-store systems indulged in 1928 and 1929 resulted in some of the smaller organizations finding themselves with inadequate working capital in 1930, it is reported. The depressed state of the securities markets made new financing difficult, and systems which are handicapped by lack of funds are reported now to be planning mergers with larger companies as a solution to their difficulties.

Another factor which is said to be increasing the trend toward combinations is the need for expert management. The leading companies have demonstrated during the depression that they were able to meet new problems created by increasing competition and declining commodity prices, the bankers say. Not all the smaller companies, however, met their difficulties so satisfactorily, it is held, and consequently the belief has arisen that through mergers adequate management can be provided for the entire chain-store business.

The merger movement is expected to be most active among the groups of stores that do annual businesses of from $500,000 to $2,000,000 and have been using bank loans to finance their expansion. There are said to be several variety store chains, selling articles ranging from 5 cents to $1, which could be managed more economically if they were absorbed by larger companies. The food-retailing business does not contain so many possibilities for mergers as does the variety field, according to chain-store excutives. Consolidations, it is expected, will be arranged through exchanges of stock rather than by purchases that might necessitate new financing.

IS THE LITTLE FELLOW DOOMED?

Mr. Chairman, there are those who say that the little business man in this country is doomed to destruction by the iron law of evolution. "What's the use of trying to help him," they sneer, "he must dies in the conflict where the strongest survive."

In the June 11 issue of the Nation one of these sophisticated ones states:

Society can not tolerate such ill-directed expenditures of effort as the individual ownership and operation of business. It is quite as anachronistic to have groceries supplied by an independent grocer as it is to have your clothes made at home.

It may be that this socialist is right. It may be that those independent business men who have been the backbone of American business progress and prosperity for a century and more must yield their independence and become only cogs in a giant, nation-wide machine of distribution.

But if that time comes it will not be evolution but devolution. It will be the result of a jungle war which we permitted to flourish without interference. If we permit the use of the deadly weapon of unfair competition of cut prices on standard goods by great retail combinations, we must expect to see independent dealers annihilated.

I will not believe that the American ideal of equal opportunity is a delusion and a snare. This Nation has been built to assure every individual a fair start and an unfettered chance in business and in life. That is why we have free and universal education for every child in order that he may have an equal chance to become the very best that is in him. It is a shameful thing to permit him to be robbed of all chance when he steps from the schoolhouse door.

Before I will admit the necessity of monopoly in retailing and the inevitable fixing of all prices by the Government I want these giant corporations to prove their superiority on a fair and square basis. They have flourished on unfair competition. Let the little fellow have a fair chance and I believe he will prove that he is a more efficient distributor than any chain ever forged in New York City.

I believe he can make a moderate livelihood for himself and family and yet serve his community more economically than any giant combination ever organized.

Surely we should at least give him a chance to protect himself against the brute forces of cutthroat competition before we say he is an obstacle in the path of progress, which must be destroyed.

Remember, these independent business men who have been praying for this bill are not asking special favors and unjust advantages. I have talked to thousands of little independent dealers in every part of the country. I have never heard one express fears over the mere size of the chains. They say, "We do not care how many thousand stores these great chains own and operate. We can take care of ourselves on an even footing. All we ask is fair play."

That is what this bill seeks and nothing else. It is no elaborate scheme with involved machinery. It is simply the right of voluntary contract for a purpose in line with fair play for the independent dealers in their desire to efficiently serve the public.

We have laws to regulate many things and solve many problems, but there is no law to define or protect the ownership of good will, the most precious asset of any business. There is no law to which the little independent retailer may appeal when his good will and his business are taken by a huge aggregation of capital. In this field anarchy still rules. It is conflict to the knife and let the weaker perish. The law stands aside and takes no part. It is time to civilize and legalize fair competition in retailing, which affects the whole public.

Mr. Chairman, I stand against monopoly in distribution, whether it is individual, corporate, or governmental. I confess I do not like to see great chains of stores dominating business with nothing at stake in the local community but a leasehold.

Even though this semimonopolistic merchandising system were far more efficient than it is, it would be a grave question whether its efficiency can repay the losses and injuries it occasions. Perhaps American communities could afford to pay a little more for the sake of maintaining home-owned business rather than to swell the receipts of New York and Chicago corporations. Perhaps a few cents' savings will not compensate in the long run for transforming independent business men into cogs in a nation-wide machine. Perhaps all the bargains may be only dead-sea fruit in comparison with the injuries inflicted upon the community.

In my estimation the community welfare does not depend upon revolutionary ideas of distribution, even though they bear the magic mark of efficiency so much as upon good, old common sense. The community does not need Napoleons of business half as much as it needs honest, service-giving business men of public spirit and clean, American standards.

WHAT ABOUT LOWER PRICES?

However, there is some force to the contention that if a certain system of distribution is the most efficient it should have the right of way over all others regardless of consequences. The chain stores claim to be benefactors because they sell at lower prices.

If it be a fact that the low prices so boastfully claimed by the chain-store systems are due to an efficiency which enables them to make a profit on prices with which the independent merchant can not compete, then there is at least an understandable argument that it would not be in the interests of the community to interfere with a battle to the death and a survival of the strongest.

Therefore let us consider the one and only claim made by the chain stores—lower prices. They do not claim better service; they give no service. The customer must come for the goods and carry them home. They do not claim that they give credit and thus help the family which is suffering from accident or misfortune. They do not claim to help community projects; they emphatically state that their whole case is staked on one thing—bargain prices.

Let them choose the field of battle. They have, without doubt, built up a general impression that they sell goods for less than independent merchants. Without a doubt, also, that impression is built on three things, first, a fact; second, a fallacy; and, third, an unfair practice in business.

The fact is that they buy in large quantities and are able to secure or bludgeon lower prices from manufacturers than smaller purchasers get.

The fallacy is the belief that bigness automatically spells efficiency and that adding a thousand stores together of necessity lowers the cost of distribution.

The unfair practice is using nationally advertised, trademarked, quality goods as bargain bait at cut prices in order to delude unwary customers into the belief that all goods are sold at similar low figures.

The fact is an advantage which can be met by independent merchants cooperating in buying in large quantities. The fallacy can be overcome by education. The unfair practice can only be overcome by legislation such as I am now advocating.

Now, right at the beginning, every right-thinking person must admit that these giant combinations should not be given special advantages over smaller competitors. If we admit that the chain stores have a right to do business, we can surely demand that they do business in honest fashion. If we allow the giant to walk the highway of commerce, we ought to be able to see that he does not prevent others from using that highway.

There are many who believe that even if large combinations can sell goods at a lower price than its competitors and employ no unfair methods, the injuries done the community outweigh the advantages.

No fair man will deny that if we say the giant combination has a right to beat the little dealer in a fair race, we may also justly say that it has no right to foul its competitor and disable it with a blow from a black-jack.

That is all this bill does. It will not injure any chain stores or other great merchandising concerns that play fair. We who support this bill believe that if fair rules are laid down, the cheat in business will go down and the honest man will prosper.

SQUARE DEAL TO CHAINS

I am willing to give the chain stores every right to which they are entitled. However, they do not have a right to sell identified goods below cost, thus injuring the property of other men, while they sell other goods at excessive profits, for their own advantage. They do not have a right to destroy worthy competitors through practices injurious to everybody but themselves. Rights result from relations with others and the rights of all must be considered in determining the rights of one.

Give the chain stores all their rights to multiply stores and centralize their purchases. They do not thus escape the expenses involved. They may eliminate the wholesaler, but they must perform all his functions and pay for it. They must have their wholesale warehouses and their trucks to distribute goods to the units. They must have their high-salaried executives, their auditors, and their nonselling employees. Every dollar of this expense must come out of the consumer's dollar. It is an eloquent fact that just as the chains have grown in might and numbers the cost of distribution has increased.

Some one will say, "The chain stores are so efficient that they can cut prices on all goods and still make money." That is a fallacy. Adding stores together do not make them efficient. Buying direct from the manufacturer does not mean that all the functions of the wholesale dealer are eliminated. Those costs have to be paid.

Chain stores buy in large quantities, but not in larger quantities than independent retailers buying together. Chain stores pay lower wages than independent dealers, but

the presence of the proprietor on the job himself overcomes this advantage.

The fact is that the independent proprietor of his own business who uses efficient methods can serve his community better and more cheaply than any chain-stores system ever organized. Research by the Harvard Business Bureau proves that the neighborhood merchant can sell goods at a lower expense than any other type of retailer. All he needs is fair competition.

Many people have been fooled by mere bigness. But often the added expense necessary to conduct these mammoth enterprises takes away all the advantages of huge purchases. And the highest-cost stores are the most ruthless price cutters on trade-marked goods. They must make more than their cost of doing business and the customer must pay it on goods without trade-marks or with private brands.

Another objector will say, "These losses on trade-marked goods are simply advertising expenses."

Well, if bargain prices are good advertising, why do these price cutters not advertise bulk and unidentified goods at real reductions?

NO BARGAINS ON NAMELESS GOODS

While the last two tariff bills have been under consideration there have been displays of imported goods bought by customs officers in New York City over the counters of huge department stores and chain stores. The total cost was known, including the tariff cost. They had no names or trade-marks, having been made in foreign countries. The prices on these articles ran as high as 2,500 per cent, a mark up that no merchant with square-deal principles would countenance.

Why not give the customers a bargain on these goods? Simply because they can not be identified by the buyer and will serve as means for more than making up the loss on standard goods that can be identified. It is a vicious business practice and depends upon trickery and deception.

No one could object if a chain grocery store takes its own brand of coffee which would be good value at 35 cents a pound and sells it at a bargain price of 17 cents. That would be a bargain and it would not injure anyone.

But when that store takes a standard, trade-marked coffee, which is known everywhere as good value at 35 cents a pound, and makes a loss leader of it at 17 cents a pound, every element in business is injured except the price cutter.

The man who put his money and his character into preparing that coffee and put his name on it to guarantee its worth to the final consumer is immediately injured. A dealer who never put a cent into the making of that product and who is not interested in it except as a spider-web bargain, has placed in the minds of the public that it is a 17-cent coffee.

The manufacturer can not produce it for 17 cents, and if the price cutting is wide enough the article is driven from the market, although it may have been one that the public desired.

The merchant who competes with the price cutter is also badly injured. He must either sell that well-known coffee at 17 cents or he must refuse to handle it, for fear that his customers will think he is a robber. He can not make a living profit on the article so he refuses to handle it. The product has been forced to compete against itself on a price basis and is finally destroyed.

It has long been the common law that a man can not use even his own property to the injury of another man. But in this case the price cutter is using something he never bought, the manufacturer's name and good will, to the injury of that manufacturer and his independent distributors. It is unjust, dishonest, and should be prevented.

THE FACTS AS TO PRICES

Mr. Chairman, there is not the slightest proof that the prices of chain stores and other great merchandising corporations in the big cities are as a whole lower than the prices of the independent dealer who serves his own neighborhood.

The weight of the evidence is all the other way. One great chain last year reported profits of $24,000,000 after all expenses had been paid. That huge profit, about the same as the great Baltimore & Ohio Railroad system, was not made by selling goods at less than cost.

There have been many cases where families have bought all their supplies one month from a chain store and the next month from an independently owned establishment. The accurate record of such expenditures shows a saving in favor of the independent.

In order to get an official answer to the question, the Journal of Commerce, of New York City, ordered a careful survey and commissioned Dr. R. S. Alexander, assistant professor of marketing of the School of Business of Columbia University, to make a comparison of the prices of 50 articles purchased in chain and independent grocery stores in 10 different neighborhoods in New York City.

That survey was made, and the report was issued and published. In the statement Doctor Alexander said:

> In the following pages I have set forth my findings on these subjects. In handling this material it is not my idea to make out a case for one type of store as against another. I hold a brief neither for chain nor for independent. With a college professor's income, I need not state that I own no chain-store securities, nor do I have ambition to start a retail grocery store. My sole aim in conducting this investigation is to ascertain the facts, analyze them fairly and impartially, and report facts, analysis, and conclusions correctly. The attitude of the Journal of Commerce is equally impartial. It tied no strings whatsoever on my typewriter.

What was the result of this investigation, the only one of its kind yet made? Did the chain stores make good their claim to lower prices?

Here is Doctor Alexander's statement:

> On the basis of the average price the independent stores have a clear advantage of 69 cents. This is 4.6 per cent of the average price of the chain stores, which means that the average price of these 50 products in the chain stores covered in our survey is 4.6 cents on the dollar higher than the average price of the same products in the independent stores visited.

THE REAL INTEREST OF CONSUMERS

Still, in spite of such surveys and the force of facts which are apparent to every person who thinks this problem through, there are Members here who are honestly afraid that higher prices will follow resale-price contracts.

It seems an evident fact. If the standard price is 50 cents and the price cutter is prevented from slashing it to 37 cents as a spider-web bargain, will it not mean that the consumer will have to pay 13 cents more for the article?

It will not. The automobile business has grown into a gigantic industry absolutely free from price cutting. The manufacturers have always named the price the buyer must pay.

Still the prices have been lower and the quality higher every year. Prices to-day are marvelously low, yet they will be lower in 1931.

If any manufacturer of automobiles makes his price too high, he simply sells more cars for his competitor. He is more anxious to lower the price than anyone else, for the lower the price, with maintained quality, the wider his market and the more cars he can sell. But he insists that he control the price, so that it will be the same to all.

A systematic, predatory price-cutting drive on any standard automobile by department and chain organizations would destroy the good will of the name and in the end bankrupt the maker. The only reason it is not done is the manufacturer's power of controlling the price through exclusive selling agencies.

Remember this: When that 50-cent article can be made to sell at 37 cents, it will be done.

Give the maker the right to protect his standard price and you will see lower prices, not higher.

These smaller manufacturers now must set a standard price in the sure knowledge that price cutters will use his product as bargain bait. He must allow sufficient discount to permit his independent distributors to compete with the cut price and yet have a living profit. Otherwise they will not sell his goods.

Thus the so-called standard price to-day in many cases is nothing but a price forced upon the makers of goods by price-cutting tactics.

Give the manufacturer the right to protect himself and his distributors and he will establish his price at the lowest possible point, knowing that it will be the same price for all. While under present conditions consumers pay any price between 37 cents and 50 cents for that product, under resale-price protection, with every consumer paying only 35 cents, in a great many cases the manufacturer and the dealers will profit more than under the price-juggling system.

I am confident that the right given in this bill will mean lower prices to the consumer, and not higher. Let no one deceive himself by the thought that in opposing this bill he is helping the consumer.

The very best boon the consumer can have is honest merchandizing. The consumer always pays for the tricks of the trade. The consumer can not have his cake and eat it, too. He can not have cutthroat practices and honest business at the same time.

And the buying public is recognizing that truth. In every congressional district mass meetings are being held, where honored officials and business leaders are explaining these facts to the people. Publications are being put into the hands of millions of Americans for the sole purpose of giving them the truth concerning this great issue.

Those who are trembling at the mental picture of irate customers robbed of their "bargains" should attend the meetings where the whole community comes together to plan and act on the principle of "business by the home folks and for the home folks." You would instantly recognize that more and more buyers are seeing that they have been cheated. There is an enlightened self-interest in evidence, which means thorough understanding of the principle in this bill and a sincere demand for its enactment.

CONSUMERS VICTIMS FROM TWO STANDPOINTS

Mr. Chairman, every Member knows of the work of the People's Legislative Service. It was organized by Senator Robert M. La Follette, who was its first chairman. Mercer G. Johnston is director.

Its publicly declared purpose is "to analyze proposed legislation, with a view to furthering measures in the interest of the general welfare and frustrating measures contrary to the same."

Under date of June 2, 1930, this organization issued a statement, enthusiastically supporting H. R. 11 and urging its immediate enactment.

After calling attention to the advocacy of the principle of resale price by Justice Holmes, Justice Brandeis, Thomas A. Edison, and 1,200 associations of independent business men, the statement concludes:

> The People's Legislative Service, which is wholly committed to the cause of the general consumer, has become convinced, after a careful study of the Capper-Kelly bill, that its passage is necessary, in the interest of the consumer as well as that of the independent merchant.

At the hearing on the bill Mrs. Julian Heath, president of the Housewives' League appeared in behalf of the organized housewives of the country. She declared that the bill should be enacted for the benefit of consumers "because of the confusion created by the present practice and the earnest desire of the consumer to see honest merchandising brought about."

She placed in the record a list of several hundreds of women's clubs, home-economics clubs, domestic-science clubs, and similar women's organizations, all of whom had formally indorsed the principle of this measure.

Miss Laura A. Cauble, a nationally known home-economics expert, personally appeared at the hearings and emphatically stated that the enactment of this bill means the welfare of the consumer.

In her statement she said:

> The trade-mark is essentially the one guaranty of standardization that we have in the markets to-day. The Government does not guarantee anything to the consumer but fure food. The trade-mark comes nearest being the standard guaranty to the women who buy.
>
> There is something human in this question. We are in a sort of economic chaos. I do not know whether this bill covers everything necessary for the solution, but it is on the way. I am for this bill because my experience convinces me that there is enough competition between makers of similar trade-marked products to keep the prices fair and because the standards set by manufacturers of trade-marked goods compels all other manufacturers of similar goods to maintain a relatively higher standard in order to meet the competition. The consumer profits by this competition between similar trade-marked goods and in the competition in maintaining standards and quality and price between trade-marked goods and all others.

Now, Mr. Chairman, I have explained the sections of this bill and have discussed the necessity for its passage and the situation it is designed to remedy.

Let me now take up in order the questions which are in the minds of those who have not yet made up their minds as to its value and the objections in the minds of those elements of business who oppose it in the knowledge that it will prevent their unfair practices.

IS THIS A PRICE-FIXING BILL?

The changes are rung on the charge that this is a "price fixing" bill.

One of the oldest tricks known in the history of legislation is the art of distorting the issue. Give a bill an opprobrious name and it is sadly handicapped. If special interests desire to kill some humanitarian measure, they do not attempt logical argument; they term it "bolshevistic" and "communistic." A worthy project for river and harbor improvement can be injuring by dubbing it a "pork barrel" scheme. Many just efforts to increase a little the compensation of worthy Government employees are delayed by cries of "salary grabs."

Emerson before the outbreak of the Civil War pointed out that the greatest difficulty to getting people to consider the evils of human slavery was emphasis on race prejudice. Friends of human freedom were called "negro lovers." "What argument, what eloquence can avail against the power of that phrase," said Emerson. "The man of the world annihilates the whole combined force of all the anti-slavery societies by pronouncing it."

Those who term this bill a "price fixing" bill are using old tactics. With that name opponents try to drown the voice of reason and common sense. They do not want a study made of the bill and the principle involved in it. They know that what a person does not understand he mistrusts, and what he mistrusts he condemns.

Without the slightest basis for it there is an effort made to foster the belief that Government price fixing is involved in this measure. In reality it is the very opposite. If present conditions prevail and domination grows into monopoly, we shall be forced to Government price fixing in order to secure fair prices to Americans. If independent business men, competing fairly and vigorously, are enabled to transact their own business under voluntary contract, we may perpetuate the American system of fair prices established through fair competition.

Let us think a moment about the "price-fixing" phrase. Of course, if a man is to sell any article, he must fix a price for it. But no one objects to that essential act if the owner and seller has no monopoly which compels the buyer to pay excessive prices for articles he must have.

There is all the difference in the world between prices fixed by an illegal combination of manufacturers who have monopolized an entire line of products and prices fixed by one manufacturer for his own identified article which is in competition with all the products in the same line.

Our whole business system, in so far as it is in accord with ethical standards, is based on fixed and stabilized and standard prices. The problem arises from twilight zones where ruthless, cutthroat competition in prices still prevails.

For instance, take the country merchant who buys a bill of goods for sale in his home community. The price of the raw material which entered into those goods may have been fixed by a farmers' cooperative. The labor used in the manufacture of those goods received a price fixed by a labor union. The transportation cost was a price fixed by the Interstate Commerce Commission by order of Congress.

We not only permit this price fixing, we encourage it and in some cases enforce it. Then, having protected all these

factors from the vicious effects of unrestricted price cutting, we say to that merchant: "Your selling price on standard-priced goods must be fixed at the will and whim of your giant competitor who seeks to put you out of business. We will not only refuse to protect you, but we forbid you to cooperate with the makers of standard goods for your own protection."

Is that not an outrageous violation of the "square deal"? Can any mouthing of the words "price fixing" justify such action on the part of any believer in justice? Equality of all men before the law has been the boast of American civilization since the foundation of the Government.

One of the very best indications as to whether America is keeping on that path or not is to be found in the laws enacted by Congress. This bill is a case in point. Favorable action will prove that Congress is interested in securing a square deal and fair opportunity for the small independent merchants in their efforts to win a moderate success against powerful rivals. It will prove also that Congress desires to give the smaller manufacturers equal opportunity with the great producing corporations which now have the legal right to control the resale price of every unit they produce.

Mr. Chairman, we are seeking to remove the indirect influence the Government now exerts as to "price fixing." A Supreme Court decision has put the "price-fixing" power in the hands of great semimonopolistic retailing corporations. One man in a New York City office can fix prices in 18,000 separate stores. He can raise prices on the same standard product in one community and lower them in another. By juggling the prices on these standard, uniform quality goods he can injure their maker and destroy independent distributors.

THE REAL PRICE FIXERS

I have here in my hand a booklet put out by a Brooklyn department store. It contains a vigorous attack upon this measure through more misstatements and misinterpretations than in any publication of the size I ever saw. The title page bears the slogan, "Which shall it be, price fixing or price freedom?"

Then there follows a labored attempt to prove that those who follow cutthroat competition methods when it benefits them and oppose it in every way when it injures them, are believers in "price freedom." It argues also that those who desire to assure honest and fair competition and to prevent predatory price cutting with its injurious results to all, are "price fixers."

Price freedom! That has a pleasant sound, but exactly what does it mean? It means that the price of every article sold shall be the result of a haggling bout between buyer and seller. Of course, if there is to be price freedom, the buyer must have a chance to fix the price. The system which Mr. Namm uses in his store, with prices marked in plain figures, which the buyers must pay or do without the goods, is not price freedom at all. That is only price fixing by the retailer.

The fact is that price freedom is the method of the primitive barbaric market. There the seller tries to make the price as high as possible and the buyer strives to beat the price down to the lowest possible point. It comes from the old bazaar system of business and is still in force in semi-civilized lands.

The one-price system is the method of civilization. Its adoption was a great stride forward in honest business. The price is set forth in plain figures; it is the same to every buyer. The customer takes it at the price or he refuses to buy and chooses instead some other article at a lower price.

So-called price freedom never was an advantage to the buyer. It was an open door to fraud and extortion. The seller always had the upper hand. With many such sellers ruthlessly competing among themselves every kind of trickery followed.

It was a blind, vicious system and it is on the way to utter extinction. The attempt to use a noble word for a most ignoble system of business will not avail.

The fact is that Mr. Namm is not for price freedom. He is for price fixing, but he insists that he shall fix all the prices himself. He will not tolerate his clerks haggling with customers over prices.

The question is not price freedom against price fixing. It is this: "Shall the price of identified goods be controlled by the man who makes them and brands them with his name and risks all he has upon their merits, or shall they be fixed by the great retailing establishments, whose only interest in them is their use as 'bait' for the sale of other goods?"

Mr. Chairman, let us not be deceived. The business interests opposing this bill are the greatest "price fixers" on earth.

They not only insist on fixing the prices of the goods they sell, but make every effort to fix the prices of the goods they buy. They use their large buying power as a whip and demand even greater concessions in the way of price. Once he embarks on that course, the little manufacturer is headed for destruction.

In The Nation for November 12, 1930, there is an article by two investigators who surveyed the chain-store system. Here is what they said as to this phase of the question:

> Often a single organization will contract to take the total output of a factory for a year. This policy has frequently led to disastrous results. The first year a reasonable profit can usually be made, but the next year the chain demands a cut in price. By this time the manufacturer is helpless. His goods have already been taken off the general market, and unless he accepts the contract from the chain stores his business will be gone. From then on he becomes a chain-store servant.
>
> The story is not yet ended. The chain stores, not satisfied to beat down the profits of the manufacturer, the salaries of the workers, and the incomes of the producers, have in many cases gone to the basis of things by becoming their own manufacturers and packers. One grocery chain now has three immense subsidiary companies engaged in preparing its products. The chain-store Utopia has been all but achieved. When the farmer receives his weekly wage from the New York office the march will have been completed. At last the producer and the consumer have been brought together with but one intervening body. One profit is being realized where three were made before. The question now facing the public is: Who can control the price paid the producer and the amount charged the consumer?

Mr. Chairman, there are other ways in which these business interests who oppose price control in the hands of the independent manufacturer and his independent distributors insist upon the power to "fix" prices of everything they touch.

Have you ever heard of a labor union of chain-store employees? These concerns will not tolerate organization of their workers for their own welfare. The price-cutting chain stores and department stores fix the wages of all employees. There is no price freedom there, but only autocratic power on the part of the employer. They talk of price freedom, but act in a way to destroy freedom on the part of every other factor in business. It is grossly unfair.

For my part, I would like to see some of this "price-fixing" power taken out of their hands. This bill, if enacted into law, will be a step in that direction. It will enable those manufacturers who desire to protect themselves and their independent distributors to say to these great "price-fixing" combinations, "Here are my goods, produced by me and carrying my name and my guaranty. You will pay me exactly the same price paid by your competitors for similar quantities. You will sell them at the uniform price I have worked out as fair to dealers and public alike. You will do that or you shall not sell my goods."

Mr. Chairman and gentlemen, this bill only puts the control of prices and resale prices in the hands of those makers of identified goods who are interested in the success of their products and those makers must work in cooperation with their distributors. Through a free and voluntary contract the maker stipulates the price, which must be satisfactory to the dealer. Rival manufacturers will compete for the retailers' favor, so the final agreement will be fair to all concerned.

Surely the maker of the goods is best qualified to fix the fair resale price of his product. He knows the cost and the market. He knows the profit necessary to assure the good will of the dealers. He knows the final price which will as-

sure the widest sale to the public, upon whom all his hopes for success depend.

It is unjust to put the power of such "price fixing" in the hands of chain stores. They do not buy the name and good will when they buy the product. They are not interested in the sale of these nationally known goods; they want to use them only as "bargain bait" in order to sell other goods at higher profits to themselves.

Everybody is interested in a fair price. The best way to assure that is through fair competition. The Government does not concern itself about automobile prices, yet they are sold entirely on the price-maintenance plan of this measure. In no industry in the world is greater value given for the money. The play of fair competition takes care of automobile prices, and it will do the same on goods sold on resale-price contracts.

One thing is certain. Even the slightest study will lead any person to see the deception contained in the term "price fixing" as applied to this measure.

Mr. COX. Will the gentleman yield?

Mr. KELLY. I yield to the gentleman from Georgia.

Mr. COX. If I understood the gentleman, he said he was against Government price fixing. Does the gentleman remember his speech of a year ago in which he said:

> We can not permit private monopoly in merchandising, and so we should prepare for Government regulation. We will never allow one or two men in New York City to fix the price of everything we buy. So we should train men qualified to fix fair prices for the public.

Mr. KELLY. Exactly; I said that if we intended to permit these great combinations to build monopoly on unfair competition it would lead to Government control of prices. It is to prevent that sad possibility that I urge this remedial measure.

Mr. COX. Will the gentleman permit me to read the rest of what he said?

Mr. KELLY. The gentleman can put it in the RECORD. I know what it is and stand on every word of it. I repeat it now. Either we must choose to have prices regulated by fair competition or by the direct action of the Government.

Mr. CELLER. Will the gentleman yield?

Mr. KELLY. I yield for a question.

Mr. CELLER. Contrary to what some of the opponents of the bill have said, this bill would not, in the gentleman's belief, increase the cost of living on such goods as are bought in bulk, like coffee or tea or sugar or clothes, and would only have any effect upon trade-marked identified articles.

Mr. KELLY. I will say to my friend and to the Members again that this bill will mean lower prices not only upon those bulk products which now are used as profit makers to cover losses on standard goods but it will mean lower prices on those standard goods themselves. Instead of having fictitious standard prices, as under the present cutthroat system, we will have real standard prices, which will be less than most of the cut prices now used to deceive the public.

LET THE CONSUMER FIX THE PRICE

Mr. Chairman, the fact is that the consumer will fix the prices under the operation of this bill. After all, the manufacturer who specifies the resale price in a contract can only fix the price at which the goods are offered for sale; the buyer fixes the price at which they are actually sold.

The juggling of standard prices by predatory price cutters confuses the buyers, while uniform price for uniform articles gives him a chance to either order future production of those articles or to inform the maker that the price is not satisfactory.

The price is right when it covers cost of production and a fair profit and when consumers buy.

Given a uniform price and the buyer can exercise far greater powers than the seller. The buyer can choose what goods he will buy, when he will buy them, and where he will buy them. The maker of the goods has only one choice; he must make a resale price which will bring consumers to the dealers for his goods, or he can keep his goods, which means bankruptcy in the end.

Let the consumer fix the prices on a fair and square basis through his patronage. That is exactly what this bill will do.

IS THERE A REAL EVIL TO BE CURED?

Mr. Chairman, no one has ever denied that unrestricted price cutting on standard goods has evil effects in some cases. Even those most violently opposed to this measure will not defend price cutting as a good thing in itself.

Edmond A. Wise, attorney for Macy & Co., during the hearing on this bill said:

> I do not defend nor do I for one moment say that a certain kind of price cutting is desirable or admirable or ethical.

Percy S. Straus, vice president of Macy & Co., said:

> I am perfectly willing to agree that there is a type of price cutting which is bad for the dealer who practices it and bad for the manufacturer on whose merchandise it is practiced.

Lew Hahn, of the Hahn chain of department stores, at the hearing referred to a certain "malignant kind of price cutting."

We are attempting here to remedy an undeniable evil. We propose a straightforward method of dealing with it, and yet these individuals insist we should do nothing. Is it not fair to assume that their opposition to any action is due to profits made from this practice? Is Congress to adopt a "do nothing" policy in order that a small group may profit at the expense of their competitors and the public? I will not believe it.

It has been suggested to-day that we should outlaw predatory price cutting as unfair competition. What would that mean? Simply that every alleged instance would have to be tried in court. Such a suggestion favors enacting a lawsuit; we are trying to enact a law.

Some of those who admitted the evil but opposed legislative remedy are being forced to change their minds by the logic of the facts.

At the hearing on this bill letters were put into the record from D. C. Keller, president of the Dow Drug Co., of Cincinnati, which operates a chain of drug stores. He frankly admitted the evil and denounced predatory price cutting on standard goods, but strongly opposed legislation and argued for education. That was in 1926.

He had to give up his idea. In December, 1929, he stated his conversion to this bill as follows:

> Until some little time ago I did not believe that conditions in retail business disclosed such a necessity or supported a warrant for legislative therapeutics along price-maintenance lines. Developments of the past year or two, however, have indicated that the time has arrived when existing disorders and infirmities in retail business present a condition more acute and necessitous than broad considerations of policy and theory.
>
> At any rate, no remedial measures seem to be effectual or even resultful, and notwithstanding my certain objections on grounds of policy and principle, I am in favor of legislation to amend the existing law so that it will be possible at least to make an honest effort to secure and maintain legitimate and necessary retail prices.

WILL IT ENCOURAGE MONOPOLY?

Mr. Chairman, it is argued by some who have no understanding of the matter that this bill will encourage monopoly. Exactly the opposite is true. It will do more to prevent the trend toward merger and monopoly than any measure we can pass.

No monopoly or near monopoly of to-day was ever built on standard price. Their main weapon was juggled prices.

The mergers which to-day darken the industrial horizon are in most instances forced by cutthroat competition. Men do not lightly give up the distinctive business into which they have put their money and lives. They want to continue and hand down to their successors a business identified with their names and sturdy good will.

It is only when they see their product demoralized by ruthless price cutting and find themselves unable to cope with it that they consider merging their identity into a great combination which shall be able through present legal methods to control the resale price.

Legislation has long recognized the danger to the public welfare involved in predatory price cutting on the part of producers. In 1914, when the Clayton antitrust law was

passed, the great price-cutting chain systems were not doing business enough to cause any alarm. To-day all the evils pointed out by those who urged the passage of that act as applied to producers are in evidence through the discrimination in prices by combinations which have spread across all State lines and do business in almost every community.

THE CLAYTON ANTITRUST ACT

Mr. Chairman, this bill is in complete harmony with the Clayton Act. I was here when that act was passed. I voted for it and took some part in the debate.

The purpose of that act was to prevent the destructive competition by which great producers cut prices in certain communities and localities in order to destroy competition and build monopoly.

No one ever suggested that it was the purpose of that law to force the retail sellers of a trade-marked article to enter into competition as to the price of that article. It was the juggling of prices to destroy competition that was aimed at, not the stabilizing of prices by an individual manufacturer, who competes with many other makers of similar goods.

I may be wrong, but I believe the practice of great grocery and drug chains in selling the same standard article at juggled prices in different neighborhoods is a violation of the Clayton Act. Whether it is or not, it is an unfair trade practice whose results are the same as those prohibited in the act.

I have an affidavit from a resident of Millvale, Pa., declaring that in one store of a chain in that town he bought a half sack of Pillsbury flour for 98 cents. In another store of the same chain not many blocks away he bought exactly the same product and paid $1.19 for it.

Of course, that chain could claim it was making prices to meet competition, but it was competition developed by its own price-cutting policy.

Let me quote from the committee report which accompanied the Clayton bill when it was brought into this House by the Judiciary Committee:

> Section 2 of the bill is intended to prevent unfair discriminations. It is expressly designed with the view of correcting and forbidding a common and widespread unfair trade practice whereby certain great corporations and also certain smaller concerns, which seek to secure a monopoly in trade and commerce by aping the methods of the great corporations, have heretofore endeavored to destroy competition and render unprofitable the business of competitors by selling their goods, wares, and merchandise at a less price in the particular communities where their rivals are engaged in business than at other places throughout the country.
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> The necessity for legislation to prevent unfair discriminations in prices with a view of destroying competition needs little argument to sustain the wisdom of it. In the past it has been a most common practice of great and powerful combinations engaged in commerce—notably the Standard Oil Co., the American Tobacco Co., and others of less notoriety but of great influence—to lower prices of their commodities, oftentimes below the cost of production, in certain communities and sections where they had competition, with the intent to destroy and make unprofitable the business of their competitors, and with the ultimate purpose in view of thereby acquiring a monopoly in the particular locality or section in which the discriminating price is made. * * *
>
> In seeking to enact section 2 into law we are not dealing with an imaginary evil or against ancient practices long since abandoned, but are attempting to deal with a real, existing, widespread, unfair, and unjust trade practice that ought at once to be prohibited in so far as it is within the power of Congress to deal with the subject.

No words of mine could better portray the picture of retail merchandising to-day. The Capper-Kelly bill is an extension of the Clayton antitrust law to meet a new evil, whose effects are identical with those unfair practices of producers which were outlawed in the Clayton Act.

IS THE TRADE-MARK A MONOPOLY?

Mr. Chairman, it is sometimes argued that the Government gives a man exclusive possession of his trade-mark and that this is enough protection for him without the right of controlling the price of the trade-marked product.

This, of course, is begging the question. The rights which go with the trade-mark are given on the theory that the public welfare will be advanced if each individual is assured of the fruits of his own enterprise and integrity. It is believed that identified goods which have back of them the reputation of the maker are of advantage to the buyer.

There is no real monopoly in any trade-mark, for no one can secure a trade-mark which covers an entire class of products. It covers one product, and any person may secure his own trade-mark on a similar product. No one can secure a trade-mark on tooth paste in general, but there are a great many brands of tooth paste, all in competition with each other.

A trade-mark has no value save as the trade-marked goods win the approval of the buying public. Sometimes the very identification of a product warns the public not to buy, since a former purchase has been disappointing.

Monopoly is simply a business not limited by competition. The very existence of a trade-mark proves competition. There is the monopoly in the use of one distinctive name, but that is on a par with the right of an attorney or a physician to the exclusive use of his own name. If that be monopoly, it is a vastly different thing than that which is referred to in consideration of the menace of monopoly.

Patent rights stand on a different basis, although the exclusive rights given in a patent are based on the general-welfare theory. And even though we changed our patent system and compelled inventors to permit any manufacturer to use them on a royalty basis, the need for price control to prevent destructive competition would still be present.

The American idea is that the individual has the right to be protected in his business against those who would rob him of his good name and reputation for their own ulterior purposes. There is protection against infringement of trade-marks and against adulteration of goods covered by the trade-marks. If that protection is to mean anything, there must be protection against the injuries caused by juggling the price of the trade-marked goods.

WILL IT ENCOURAGE COMBINATIONS?

Mr. Chairman, it is said that if we give the competing manufacturer of a competing branded product the right to establish the resale price of his product it will encourage him to enter into a combination with his competitors to fix the price on all products in the class.

Now, think just a moment. We are in the midst of a merger-mad time right now. Old institutions, with long and honorable records as separate and distinct enterprises, are sinking their identity in great consolidated companies.

What is the reason? Cutthroat competition. The great consolidation with ample capital and a comprehensive selling organization can prevent the destruction of its business by price cutters. But the little independent manufacturer is barred from protecting his business from such business pirates. He will not endure it if he can find any way of escape. He can join with other manufacturers into one consolidated company and establish his own retail stores and sell direct to the consumer.

That, of course, means the extermination of more retailers, and it means that the increased cost of such distribution must be paid by the consumer. Still, Congress by its inaction practically invites the little manufacturer to take that way of escape from the destructive attacks made upon him.

To come now and say that if we assure that little independent manufacturer that he can retain his own identity and still protect himself against unjust and vicious methods he will then combine, either secretly or openly, is an unwarranted insult to the average business man.

The average business man in America is an individualist, proud of his own enterprise and the good name he has built up. He is not yellow enough to want to run into the arms of a monopoly to escape the battles of honest business. He wants no combinations and no understandings with his competitors. He wants only a square deal.

If we give him the right to cooperate with his helpers, the distributors, in getting his goods fairly and openly into the hands of his consumers, you will see the hottest kind of competition between manufacturers for the patronage of the public. And it will be fair competition, with publicly known prices, and based on quality and service.

The present system encourages, almost enforces, combination. The right of price maintenance will stop it to a greater degree than anything we can do.

SHALL WE LIMIT THE PROFITS?

Now there are those who advocate that if agreements for resale price be legalized there should be a definite limitation of profits to be made.

Of course the entire purpose of this bill is to make it possible for fair competition to regulate both prices and profits. We believe that such a force is a better regulator than any other. If prices and profits are unduly high for one article, it will result in the sale of other goods at reasonable profits.

If there is any danger in a system where manufacturers control the price, why is there not a proposal here to limit the profits of the General Electric Co., the Henry Ford company, and all the manufacturers who sell their products through their own retail stores? They have all the powers granted by this bill, and yet no one has tried to fix a limit to their profits.

They are all in competition with others engaged in the same business. No matter how great their capital they can not extort unfair profits. Then why should we fear the little manufacturer who is facing the hottest kind of competition and who does not dare make his price too high and his profit too large lest he build up his competitor and destroy himself.

How would profits be limited as a practical matter? Some Government agency would have power to investigate profits to see if any concern was making a profit beyond the definite figure specified.

What does that mean? It means the investigation of every item of cost of production in every factory. Raw-material costs, labor costs, insurance, depreciation, and all the other items would be reviewed and a decision reached as to whether they are rightful charges or not.

Will you subject wages to Government control because some one thinks they are too high? Will you reduce the cost of raw materials because of some objection that they are excessive? There is just as much logic in that as in putting the hand of government on profits in a competitive business.

You can not control profits in a competitive business without also controlling expenses. That is exactly what would follow if the Government stepped in to fix the price of every product. In fact, fixing profits is fixing prices.

We have not yet come to the point where we desire the Government to fix the prices in competitive business. The very ones who profess a fear that the right of resale-price agreements would result in undue profits are the very ones who cry out against Government interference with business.

Yet any attempt to substitute some other force than fair competition in the making of prices inevitably puts the Government into the profit-fixing and price-fixing business.

Let us have faith in the American system of business. Let fair competition between honest, progressive business men regulate profits on identified competitive goods. It will not fail to produce the fair profits upon which American prosperity in the long run depends.

HENRY FORD USED PRICE AGREEMENT

That is the way Henry Ford began the distribution of his cars. He did not at first have the capital to establish his own selling agencies and he used the regular means of distribution. John Wanamaker had a resale-price contract with Henry Ford, stipulating that the car must be sold at one uniform price.

Under that system of operation Henry Ford controlled the resale price of every car. The price was lowered and the quality increased every year.

When the Supreme Court ruled that such a contract was invalid Ford turned to the much more cumbersome and expensive system of exclusive selling agencies. He had to control the price to his buyers or predatory price cutters would have ruined his great business. Fortunately he was strong enough to do it, and has been able to continue lowering the price and increasing the quality, even though he must add into the price the added cost of distribution.

Under present conditions no young Henry Ford can possibly develop an automobile business. Not because of the competition of great concerns but because he can not do what the older Henry Ford did—protect the good will of his car when he sold through regular distributors. Now the automobile maker who tried that would be destroyed by price cutters just as soon as he made the car known as good value at the price.

The enactment of this bill will give him a chance.

Mr. Chairman, there is no conflict, but community of interests, between producer and consumer. By assuring fair and honest competition on a standard-price basis we will bring about the same benefits which have come from standard production. Business is not an end; it is a means to an end, and that end is the promotion of the general welfare and prosperity. It will do that best on a square-deal basis, which this bill aims to assure.

INJURY TO INDEPENDENT MANUFACTURER

Mr. Chairman, it is very ignorantly argued that the manufacturer is not injured but rather helped by the price cutter who lowers the standard price. "Does he not get his full price from the dealer?" say these objectors who are blind to every fact of modern merchandising.

They want the names of manufacturers who have been injured by this malignant price cutting.

I could give a hundred such cases. Every small manufacturer of a good-quality product who markets through wholesalers and retailers can give you the facts.

Let me give one specific statement which clearly shows the effect of this cutthroat practice upon the manufacturer. C. S. Williams is vice president of the Thomas A. Edison Co., which competes with many companies making electrical goods. The following statement is by Mr. Williams:

Thomas A. Edison (Inc.) started in the electric-appliance business in the early fall of 1928 with two products—the Edicraft Automatic Toaster and the Edicraft Siphonator. In our preliminary investigation of sales possibilities in New York City we found that the better class of store invariably asked if we intended to sell R. H. Macy & Co. They explained that if we did, they might be forced to keep our line in stock by popular demand but they would not under any circumstances push it. As a result of our survey, we decided not to sell to R. H. Macy & Co. or any other stores with similar cut-price policies.

During the fall of 1928 the demand for our products so far exceeded our limited supply that we had no trouble with the cut-price group. Macy sent several orders to us which we refused to fill, and they could not obtain a supply from our two or three distributors owing to the demand from regular dealers.

In January, 1929, we expanded our selling efforts to include the entire country and began to make shipments in relatively large quantities. In February Macy received its first stock of toasters from a Philadelphia dealer and put them on sale at 91 cents below the standard retail price of $15. We had the choice of losing our New York market or buying this stock back from Macy, and naturally took the latter alternative. We have been buying toasters, one at a time, from them ever since. Our problem is not unlike that of the celebrated Mrs. Partington, who tried to sweep the ocean back with a broom. As fast as we buy they open up new sources. Since February we have had from one to several dozen employees continuously engaged in this ridiculous business of buying toasters. It has cost us thousands of dollars, but it has so far accomplished its purpose of keeping other department stores from cutting their prices to meet Macy's—the first step in the dog-eat-dog procedure which drives a good product into obscurity.

The history of a competitive toaster made by a middle western concern is instructive in pointing out what would have happened to us—and what may yet happen to us—if we allow Macy to pursue its amiable policy unhampered. The toaster to which I refer is an automatic toasting device intended to retail at a price of $12.50. I shall not be accused of undue bias when I say that it is worth this price. It is a well-made and efficient appliance. No prominent store in New York to-day is pushing this toaster. They can't afford to.

When this toaster was first put on the market Macy sold it at $11.75. Other department stores met this price, whereupon Macy cut to $11.04. The other stores met this price. Here are the prices at which Macy has sold this toaster on various dates:

Mar. 17, 1928	$7.89
Sept. 28, 1928	8.41
Mar. 26, 1929	7.76
Apr. 17, 1929	7.23
May 27, 1929	7.46

Since April Macy's price has never, to my knowledge, been above $7.50.

The dealer buys this toaster at from 33⅓ to 40 per cent off list. He pays from $7.50 to $8.33 for it. It is unnecessary to point out

that the sort of price war which the above figures denote has made this article impossible for the dealer to consider as a serious breadwinner. Moreover, the very stores who have done the cutting have put this toaster in the background. It has reached a point where there is nothing in it for them, and they don't want to sell it. The manufacturer, through no fault of his own, has lost an immensely rich market. If these prices make any headway in the rest of the country, he will be put out of business.

CONTROL OF RESALE PRICE AT PRESENT

Mr. Chairman, no one contends that control of the resale price by the producer is against public policy or that it is illegal. The Supreme Court and every other court in the land has upheld such price control, save and except where it is controlled by the most effective and efficient system—that of contract.

Right now any manufacturer in the land, acting alone in the course of a business free from monopoly, may control the price of every unit he produces by establishing resale agencies of his own. He may do the same thing by consigning his goods to any number of retailers and taking his payment when the goods are sold.

He can go still further. He can suggest a resale price for his product, publish it for the guidance of the public, and print it upon the package. He can declare that he will not sell to those who do not maintain the resale price, and if informed by his own agents that those to whom he sold are cutting the price, he can refuse to sell to them.

The one thing he can not do is to sell his goods subject to the agreement, express or implied, that the resale price will be maintained. And it is regarded as an implied agreement if price-maintaining dealers report price cutters.

Of course this entire situation means that the little manufacturer is helpless. He is not powerful enough to establish retail stores everywhere or to send his goods out on consignment and wait for his money. And the only practical method by which he may secure information about price cutters is from other distributors in the trade.

This bill must be enacted if we are to give the little manufacturer his equal chance to do business. He can not now protect himself from predatory price cutting. Enact this bill and we have carried out the spirit of the Sherman anti-trust law in its essence; that is, the preservation of industrial freedom and the prevention of monopoly.

WHY NOT KEEP GOODS FROM PRICE CUTTERS?

The question is raised as to why manufacturers do not keep their goods out of the hands of price cutters who slaughter their prices.

I have pointed out that that can be done with practical certainty by those manufacturers who are powerful enough to establish their own resale agencies or sell goods on consignment or have agents through all their territory reporting price cutters.

The little manufacturer, who must sell through wholesalers to retailers, is helpless. He can not use any one of these methods.

Let us not deal in theories, but in facts. In 1926 Fayette R. Plumb, manufacturers of quality tools, announced publicly that they would not sell to chain stores or catalogue houses.

It has engaged in a continual battle to carry out that policy. False-pretense orders were sent in to the company. They were refused wherever investigation disclosed the facts. One order received and refused was from the Republic of Latvia. It was found that the goods were to be bootlegged to price cutters.

Then a great catalogue house advertised Plumb axes and stated that they could be bought at cut prices by mail order or in any of the 300 and more chain stores operated by the system.

On January 6, 1930, the Plumb company met it with another open letter that he would attempt to stop any source supplying these axes. Investigators mailed in orders and in every case where the order was filled another ax was substituted for the Plumb product.

Attempts to purchase the axe advertised was then made in 79 stores of the company. In only two were the Plumb goods on hand. In the others a substitute was offered.

Here was a case where the good will of a firm was injured even though the goods were not carried. Surely there should be a remedy for such injury and a method of preventing such rascally methods.

The only practical and fair method as far as it concerns the little independent manufacturer is to permit him to contract with his distributors as to the resale price of his goods. That means benefit to every buyer, for it protects him against the "palming off" of inferior goods upon him.

SHOULD WE LIMIT THE RIGHT TO SELL?

Mr. Chairman, it has been said that it is a fundamental American principle that "a man who buys and pays for a thing should have the right to sell it on any terms he sees fit or as his necessities dictate."

Of course, that is not true unless all our laws dealing with uniform selling prices for railroad tickets, postage stamps, life insurance, electric light, gas, water, and so forth, are un-American.

These laws are based on the fundamental principle that equal rights mean equal prices wherever the Government exercises power. Would anyone be foolish enough to contend that a scalper of railroad tickets or a life-insurance agent should be allowed to cut prices when he finds his house rent hard to meet?

Congress has time and again acted to prevent the evil of cut prices as to commodities and services over which it has jurisdiction. Discrimination in prices is prohibited in railroad transportation and uniform and standard rates are decreed.

Congress has prohibited the sale of postage stamps at cut prices. Why was that action taken so long ago as 1878? It was not a whim or an unmeaning gesture but an effort to prevent a serious evil which was actually in existence.

If you will read the Postmaster General's report for 1877 you will find that some 20 pages are devoted to the evils arising from the practice of selling postage stamps at cut prices. The postmasters were increasing the sale of stamps upon which their compensation depended by selling them at a discount.

The Postmaster General denounces this practice in unmeasured terms. He states that it demoralizes the service, swindles the Government, and robs honest postmasters. He stated:

To-day there is scarcely a city in the land where postage stamps can not be bought of private parties at a material discount from legal rates.

He recited the fact that outgoing postmasters retained the stock of stamps.

By selling these stamps—

Said the postal chief—

and on the allowance of a small discount, the sale of stamps in a small place for a time might be easily monopolized; he would be enjoying the emoluments of the office while the new postmaster was doing the work. In the aggregate the injustice which results from this one form of abuse is enormous.

Is that not an eloquent statement of the effects of the price-cutting evil as it relates to standard, identified products? The cut price on such goods leads to monopoly in their sale. Yet the price cutting on postage stamps was not to give the patrons a bargain but for the ulterior purpose of increasing the income of the seller. Just so the price-cut dealer in standard goods seeks by this deceptive practice to increase his own profits. He is not interested in the welfare of the buyer but in his own selfish interests.

The picture presented by the Postmaster General in 1877 led to the enactment the next year of the act of Congress maintaining the face value of postage stamps. That law was taken into the courts in United States against Douglass. It was decided by the District Court for the Eastern District of South Carolina, January, 1888—Thirty-third Federal Reporter, 381. The court said:

The act of Congress forbids any disposition by a postmaster of stamps intrusted to him except the sale of them at their face value to third persons.

The undoubted evils which exist to-day in merchandising because of price-cutting practices should lead to action by this Congress, at least so far as to give permissive rights to

independent manufacturers and dealers to contract for their own protection and that of the consumers they serve.

IS THERE DISCRIMINATION AMONG COMMUNITIES?

Mr. Chairman, the provision in section 2 that retailers in the same city or town shall be granted equal terms as to purchase and resale prices has given the National Retail Dry Goods' Association, an organization dominated by chain department stores, the chance to misrepresent its meaning. In a bulletin sent to Members they declare that this provision will lead to unjust discrimination between retailers in large cities and those located in smaller cities and towns nearby.

That this organization does not, in fact, represent its entire membership is proven by the letters sent by individual department stores heartily supporting this bill. Let me quote just one of them. It is from President T. J. Prentice, of the Lynn & Scruggs Dry Goods Co., of Decatur, Ill.:

> While we are members of the National Retail Dry Goods' Association we are not in accord with their policy on this matter and never have been. We are thoroughly satisfied that those who oppose this and similar legislation are price cutters and chain organizations, neither of which we have any use for. We hope the bill will pass, and we are now of a mind to drop our membership.

I contend that whether this provision were in the bill or not the practical result would be exactly the same. The manufacturers trying to protect their good will may be assumed to have common sense enough not to have one resale price in one store and another price in another store in the same city. By the same token they will not have varying resale prices in different towns in the same trade area. Such a method would be exactly the evil these manufacturers are trying to guard against. Predatory price cutting establishes these juggled prices in different stores and in different communities within the same territory. If any manufacturer is satisfied with these varying resale prices to consumers, he will not use the right of agreement carried in this bill.

However, it is an ironical argument coming from great chain department stores in the larger cities that this bill will discriminate against the business men of the smaller towns nearby. Price juggling has developed an aptitude for fact juggling.

Everyone should know that it is the present "cut price" system as applied to well-known trade-marked goods which shifts trade from the small towns to the big cities in the same trading area. Huge advertisements picture these widely known goods at less than cost. It would seem that all goods could therefore be bought at such bargain prices in these great city stores. The improved roads and the automobile make it possible for those in the smaller communities to buy goods in the city. The money goes out of the neighborhood, never to return.

If the people in the small cities and towns know the fact that they can buy merchandise at home just as economically as in the great city they will leave their money where it will build up the local community. Then the small-town merchant will carry a larger stock and employ more helpers from among the home folks.

Right now, the dollar will buy as much, if not more, in the smaller towns as in the great city. The only thing that prevents the universal recognition of this truth is the "loss leader" trick. We are trying to save the smaller towns from the grave harm done them by that trick. Now, to have the huge stores in the great cities break forth as defenders of the little business men in the small cities is a new and strange thing under the sun.

WHAT ABOUT LITIGATION?

Mr. Chairman, opponents of this bill profess to be worried about litigation after it is enacted.

Who will be rushing into the courts? Not the individual manufacturer, whose sole purpose is to cooperate with his distributors through mutual agreement so that they may sell the most of his goods possible at the lowest prices possible. Not the individual merchant, who is praying for the opportunity to protect himself against those who cut prices for ulterior purposes.

No merchant is required to enter into a contract. There will be a hundred varying contracts offered for his acceptance. All the advertising in the world can not make him push the sale of goods he does not desire to handle.

When he does make a contract it will be because he desires to do so. He will not violate the contract, and it is absurd to think that he will rush into the courts. Honest business men, seeking a common purpose by fair methods, have no difficulty in straightening out differences of opinion without litigation.

This bill opens up no new fields of law. The law of contracts is well established. A breach of this contract will be dealt with exactly as the breach of any other contract.

WHAT ABOUT PROPAGANDA?

Mr. Chairman, Members talk about propaganda for this bill and declaim against the thousands of letters and telegrams which have come to Representatives from their constituents praying for the passage of this bill. Since when has it become a crime in this representative Government for the makers of Congressmen to inform their agents as to their desires in legislation?

It is easy to talk of these communications having been inspired and that is true. They have been inspired by the actual facts confronting individual business men.

In 1915 Mr. Brandeis said to those interested in this principle:

> The only way to get this through Congress is to educate the American people on this subject. Bring your facts before Congress and the people and you must succeed; but the task of education must be persisted in.

That program has been followed out. Steadily and surely sentiment has grown for this just legislation. The situation to-day shows that it has grown greatly as far as Congress is concerned, but that is only a reflection of the public sentiment.

The little dealers and manufacturers are aggressive and united as never before. The independent storekeepers still do considerable retail business, and they are acquainting their friends and customers with the truth.

That is one reason for the eloquent statement made the other day by H. C. Dunn, chief of the domestic-commerce division of the Department of Commerce, in a speech at Moline, Ill. In speaking about the needs and desires of consumers to-day, he said:

> It was brought out in our study that women are quick to detect "stock sweeteners" in bargain sales and resent their use purely as sales bait.

I give the people more credit for intelligence than those who defend this "bargain bait." I do not blame the people for not being like cats, to see in the darkness brought by those who give a few cents on a standard product in order to take a dollar concealed in an unknown article. I say that if you turn the sunshine into business the people will act fairly and justly.

IS CONGRESS MEDDLING IN BUSINESS?

Mr. Chairman, there is a determined effort to make it appear that this just attempt to restore a proper right to independent business men is an all-advised interference of Government in business. It is proclaimed that this is adding more laws when there are too many laws already.

Such statements are sheer deception. This bill is to restore the freedom which was put in chains through judicial action. It is to stop the interference of Government in a business procedure which business men are competent to handle for themselves. It is a law of Congress made necessary to remedy the result of a judicial law.

I have already said that this law should not be necessary. By the natural law of equal human rights, independent and small manufacturers should not be prohibited from doing what their great competitors legally and properly do. When monopolies are in process of formation through unfair practices sanction by the courts but never by Congress it is high time that action be taken.

For every wrong there must be a remedy. Here is a wrong which injures everybody except those who use it. No one can claim that we propose any fanatical remedy when we ask only that independent business men who desire to protect themselves from the evils of that wrong shall have legal permission to do it.

Can any law within the power of Congress have a greater purpose than "to establish justice" and "secure the blessings of liberty for ourselves and our posterity"? Millions of men to-day are being robbed of the fruits of their labor because of unjust business practices which are substituting chains for liberty, not only for themselves but for their children.

Our neglect has permitted a judicial interpretation and a judicial declaration to stand for law and public policy. Under such circumstances it is inexcusable to refrain from exercising our constitutional duty, that of proclaiming the law and the public policy.

WILL MANUFACTURER DOMINATE THE RETAILER?

Mr. Chairman, it is charged that if the manufacturer of a branded product is permitted to enter into agreement with the retailer as to the resale price, the result will be to put the manufacturer in virtual control of the retail business of the country.

That argument is on a par with the declaration that if you pull a drowning man out of the water he may be sunburned. Retailers are facing destruction because many manufacturers are prohibited from cooperating with them on a square-deal basis. They know the danger of the present unfair competition and we should at least presume that they are not all imbeciles. Every national organization of the smaller independent manufacturers in the country have repeatedly and by unanimous vote urged the enactment of this measure. For my part, I would rather take the judgment of the little neighborhood merchant as to what will give him a fair chance than that of the biggest price-cutting department store that ever opened in a metropolis.

Then, too, the system of controlling retail prices on branded articles by contracts, notices, and so forth, has always been legal in England, Germany, France, Spain, Norway, and all leading countries. It has never resulted in putting the retailer under the domination of the manufacturer.

Gordon Selfridge, head of the greatest English department store, says:

> Of course, if a manufacturer makes a product and sells it only with the understanding that it be sold at a certain price, he has an entire right to do this, and we, as the distributors, may buy or not of these articles as we choose. Such a contract can be enforced between the producer and the one to whom he sells and it is not an unfair demand, because if the distributor is not willing to maintain that contract he need not buy the merchandise.

The fact is that retailers will not handle goods where the attempt is made to impose unreasonable conditions. Extortionate prices on one branded article will produce a flood of competitive articles sold at the same profit to the retailer but at a lower price to the consumer.

Fair trade in branded merchandise will not put the retailer under domination. Indeed, it will give him his proper place as an indispensable agent of distribution, with a right to cooperate with the manufacturer for the benefit of the buying public as well as himself.

LEGAL CHAOS AT PRESENT

Now, Mr. Chairman, I have dealt with this question thus far from an economic and public-policy standpoint. My contention is that the public welfare demands that honest and efficient business men shall be permitted to protect themselves against piratical practices.

Let us now consider this question from the legal standpoint. Others here are more qualified to deal with that phase, but in the past 15 years I have conferred with some of the most able and talented attorneys in America on this problem and have perhaps absorbed some information.

Everyone should know the present chaotic situation. There is not a lawyer in America who can tell business men exactly what rights they have as to price protection on standard goods. The Federal Trade Commission vouches for the fact by saying:

> Orders of the commission, issued under its organic act, have been upheld in some circuits and set aside in others on almost undistinguishable statements of fact.

It must be agreed that every maker of an identified, distinctive, trade-marked product will endeavor in every lawful way to protect the price, upon which his good will depends, from destructive, cutthroat competition. Also, every independent dealer in those goods will naturally try to cooperate in every lawful manner with a manufacturer who is trying to protect him.

What may they do in the present state of the law? There are able lawyers here but none can answer that question with certainty.

For instance, I hold in my hand a contract which is now being used by the manufacturer of a trade-marked dental cream in dealing with his distributors. I will read it, deleting the name, lest he be cited for violation of the law.

AGREEMENT

In consideration of the _____ Dental Products (Ltd.), hereinafter called the "company," appointing the _____ _____, of _____ _____, their special selling agent for _____ dental cream, and extending the following agency price schedule and terms as listed below:

The _____ _____ agrees to purchase during the life of this agreement _____ gross, and to use their best efforts consistent with good business judgment in promoting the sale and distribution to the general public of _____ dental cream, and will keep at all times while this agreement is in force a prominent display in their place of business.

Schedule A. One gross _____ dental cream, at $4.20 per dozen.

Schedule B. Six dozen _____ dental cream, at $4.60 per dozen.

Schedule C. Three dozen _____ dental cream, at $4.80 per dozen.

Terms: All invoices are subject to 20 cents cash discount per dozen if paid on or before the tenth day of the month following the date of invoice or 30 days net.

_____ Dental Products (Ltd.), reserve the right to terminate this agreement at any time if, in the opinion of the company, the _____ _____ is conducting its advertising and sales campaign on _____ dental cream in a manner against the general welfare of the company.

If this agreement is terminated by the company, the company reserves the right to purchase back from the agent any and all of the goods sold the agent by the company as per schedule invoiced.

_____ Dental Products (Ltd.), will not sell any druggist who demoralizes the company's market by destructive price cutting and any dealer who is not selling agent of the company when purchasing direct or through a wholesaler must pay the retailers' net prices.

_____ Dental Products (Ltd.) further agree not to appoint another selling agent within an agreed radius without the permission of the _____ _____ unless the company finds that the appointed selling agent is not cooperating to the best of their ability.

This agreement shall be in force and effect for one year from date and is automatically renewed each year unless the company enacts a new schedule of prices. This agreement is binding and valid only when signed by an officer of the company.

Is that a legal contract? Surely there is nothing dangerous in it and nothing against public policy. This manufacturer has no monopoly in dental creams, for there are hundreds of brands competing with his, and they are sold at every price imaginable. He has no power to restrain trade in dental creams. He acts at his own peril in making this agreement, for if his price is too high he simply loses his own business to his eager competitors.

This company prints its prices to dealers in plain figures in the contract and they are uniform prices. The agreement does not specify a resale price, but that is implied by provisions that the company will not tolerate destructive price cutting and will terminate the contract if the dealer advertises or sells the product in a manner calculated to injure the maker. In such an event the manufacturer agrees to take back all unsold goods and will pay the full price for them.

In all justice and common sense there should be no uncertainty about it; such an agreement should be legal, and it will be under the provisions of this bill. Nor will there be any subterfuge about it, the resale price will be there in plain figures.

Mr. Chairman, I maintain that from time immemorial down to the Doctor Miles Medical Co. decision by the Supreme Court, no lawyer would have told his client that this

contract with the inclusion of a specified resale price, was not valid and enforceable.

That is not true to-day. The law has not been changed, but court decisions have set up "No thoroughfare" signs along age-old highways of commerce for some classes of business men while permitting other classes to travel on without the slightest interference.

Representative BECK sums up the situation as to the common law in the committee report, urging the enactment of this bill. He says:

As I have shown, the common law favored liberty of contract. One could search the yearbooks and the earlier common-law reports in vain for a single case that held a resale-price contract illegal. If any such decision exists, it is yet to be cited.

The decision of Mitchell *v.* Reynolds (1 P. Wms. 181, decided in 1711) and all subsequent cases thereafter, simply recognized the common law, and the only change of doctrine was the growing recognition by the courts that all restraints upon alienation growing out of contract, should be recognized as within the fair rights of the contracting parties, unless such restraints were prejudicial to the public welfare. As society emerged from the primitive conditions of Littleton's and Coke's times, and the great industrial era of the steamship, the railroad, and the telegraph came, the courts and legislatures of the leading nations recognized that the true welfare of society required the greatest possible liberty of contract not clearly inconsistent with the public welfare.

In the decision in Addyston Pipe & Steel Co. (85 Fed. 281) Judge Taft pointed out that under the common-law covenants in restraint of trade are upheld as valid when they are agreements by the buyer of property not to use the same in competition with the business retained by the seller.

When a dealer ruthlessly cuts the standard price of a trade-marked article, he uses the product to the injury of the maker of the product and should be restrained from such a policy.

That was the common-law doctrine, and as Representative BECK states, there is no case where a contract to provide protection against such injury was ever declared invalid under the common law.

Then in 1890 the Sherman antitrust law was passed. The best diagnosis I have ever seen of the conditions which led to that measure is the one given by President Hoover in a speech before the National Association of Manufacturers on May 10, 1920. He said:

At the time the Sherman Antitrust Act was passed the country was in the throes of growing consolidation of capital. These were consolidations of actual ownership, and the country was alive with complaints of attempts to crush competitors with unfair practices and destructive competition.

Now, it was never the intention of Congress to interfere, through that law, with the right of the maker of identified goods to stipulate the prices at which they should be sold.

It was cut prices which the great combinations, like Standard Oil and the Tobacco Trust, were using to destroy competition. Congress was trying to protect individual business on the grounds stated as follows by the Supreme Court of Ohio in a Standard Oil case (O. S. Rept. 49, p. 186):

A society in which a few men are the employers and the great body are merely employees or servants is not the most desirable in a republic, and it should be as much the policy of the laws to multiply the numbers engaged in independent pursuits or in the profits of production as to cheapen the price to the consumer. Such a policy would tend to an equality of fortunes among its citizens, thought to be so desirable in a republic, and lessen the amount of pauperism and crime.

The Supreme Court of Michigan, in a great decision (77 Mich. 632), met this same question of cheap price. It declared:

It is no answer to say that this monopoly has in fact reduced the price of friction matches. That policy may have been necessary to crush competition. The fact is that it rests on the discretion of this company at any time to raise the price to an exorbitant degree.

After the Sherman Antitrust Act was passed Federal courts upheld the right of the maker of identified goods to enter into a contract with his distributors as to resale price.

To prove that only needs a reference to the Doctor Miles case, which was decided by the Circuit Court of the Northern District of Illinois in 1906 (Doctor Miles Co. *v.* Platt, 142 Fed. 606).

Here the entire marketing system of the Doctor Miles Co. was under review. It was pointed out that the contract made with the wholesaler handling the goods stipulated that such wholesaler should sell the goods at certain prices and only to persons whom the Doctor Miles Co. should designate. The contract made with the retailer provided that he would sell only at certain prices and only to persons whom the Doctor Miles Co. should designate. The contract made with the retailer provided that he would sell only at certain prices and that he would not sell to any wholesaler or retailer who had not entered into a similar contract with the company.

The court in its decision clearly portrays the legality of such contracts. It says:

That the contract is valid and lawful is thoroughly settled by the authorities. The products being made under trade secrets, of which complainants are the exclusive owners and no other person having any interest or right in the secret formulas under which the articles are made or to the articles themselves, the manufacturer may withhold them entirely from sale, may sell them on such terms as they please, may withhold them from one person while selling to others, and may fix any price in their sole and exclusive discretion. This rule is abundantly settled.

Then follows a long list of decisions bearing out the admitted legality of such contracts. Then the court adds:

The right of a patentee, owner of a copyright, or owner of a secret process is merely the right of exclusion or disbarment. He may sell or not, as he chooses * * *. Defendant might lawfully buy these remedies from retail druggists at the prices fixed in the contracts between them and the manufacturers or general wholesale agents and sell them at will for such prices as he might make. This, however, is a very different thing from obtaining these medicines by inducing wholesalers or retailers to violate their contracts with the owners of formulas. Defendant may properly be enjoined from in any way producing a violation of these contracts, since they are lawful and proper under the circumstances.

Then in 1911 came the Supreme Court decision in the Doctor Miles case (220 U. S. 373). Here the court declared generally against price maintenance as applied to movable articles, and based on contracts, actual or implied.

Other decisions were as follows:

In Straus *v.* Victor Talking Machine Co. (243 U. S. 490, 37 Sup. Ct. 412, 61 L. Ed. 866, L. R. A. 1917 E, 1196) the Supreme Court declared against the legality of either the form or the substance of resale-price contracts based on patented articles.

In Boston Store of Chicago *v.* American Graphophone Co. et al. (246 U. S. 8, 38 Sup. Ct. Rep. 257) the Supreme Court held that resale price fixing contracts based on patents were contrary to the general law and void, and that violations thereof could not be treated as patent infringements.

In U. S. *v.* Colgate & Co. (250 U. S. 300, 63 L. Ed. 992, 39 Sup. Ct. Rep. 465) the Supreme Court sustained the right of a manufacturer to select his own customers in the absence of resale price maintenance contracts. This case confirms the doctrine of Miles against Park, above mentioned.

In U. S. *v.* A. Schrader's Son, Inc. (252 U. S. 85, 64 L. Ed. 471), the Supreme Court specifically reaffirms the rule in Miles against Park and again recognizes the right of a manufacturer to name his prices and refuse sales to those who would not observe them, provided there were no resale-price agreements.

In Frey & Son *v.* Cudahy Packing Co. (256 U. S. 208, 65 L. Ed. 292) the Supreme Court again affirms Miles against Park, and states that the essential agreement, combination, or conspiracy to maintain resale prices might be implied from a course of dealing or other circumstances.

In Federal Trade Commission *v.* Beechnut Packing Co. (257 U. S. 441, 66 L. Ed. 307) the Supreme Court again reaffirms the broad rule of Miles against Park by holding that a trader may refuse sales to price cutters but may not go beyond that by maintaining resale prices by contracts or combinations, express or implied.

From the very beginning this reversal of long-established policy has been vigorously opposed by learned jurists.

In the Doctor Miles case Justice Holmes, in a most logical dissenting opinion, said:

The sale to the retailers is made by the company, and the only question is whether the law forbids a purchaser to contract with his vendor that he will not sell below a certain price. I suppose that in the case of a single object, such as a painting or a statue, the right of an artist to make such a stipulation would not be denied. In other words, I suppose that the reason why the contract is held bad is that it is part of a scheme embracing other similar contracts, each of which applies to a number of similar things with the object of fixing a general market price. This reason seems to me inadequate in the case before the court. In the first place, by a slight change in the form of the contract the plaintiff can accomplish the result in a way that would be beyond successful attack. If it should make the retail dealers also agents in law as well as in name and retain the title until the goods left their hands, I can not conceive that even the present enthusiasm for regulating the prices to be charged by other people would deny that the owner was acting within his rights. It seems to me that this consideration by itself ought to give us pause.

But I go further. There is no statute covering the case. There is body of precedent that by ineluctable logic requires the conclusion to which the court has come. The conclusion is reached by extending a certain conception of policy to a new sphere. On such matters we are in perilous country. I think that at least it is safe to say that the most enlightened judicial policy is to let people manage their own business in their own way, unless the ground for interference is very clear. What, then, is the ground upon which we interfere in the present case? Of course, it is not in the interest of the producer. No one, I judge, cares for that. It hardly can be in the interest of subordinate vendors, as there seems to be no particular reason for preferring them to the originator and first vendor of the product. Perhaps it may be assumed to be the interest of the consumers and the public. * * * I see nothing to warrant my assuming that the public will not be best served by the company being allowed to carry out its plan. I can not believe that in the long run the public will profit by this court permitting knaves to cut reasonable prices for some ulterior purpose of their own, and thus to impair, if not destroy, the production and sale of articles which it is assumed to be desirable that the public should be able to get.

The conduct of the defendant (the price cutter) falls within a general prohibition of the law. It is fraudulent and has no merits of its own to commend it to the court. An injunction against a defendant dealing in nontransferable round-trip reduced-rate tickets has been granted to a railroad company upon the general principles of the law protecting contracts and the demoralization of rates has been referred to as a special circumstance in addition to general grounds. * * * I think that the importance of the question and the popularity of what I deem mistaken notions makes it my duty to express my view in this dissent.

Mr. Chairman, let me review a few of the decisions made since the Doctor Miles case to prove that many courts found themselves compelled to run counter to the doctrine laid down by the Supreme Court.

The New Jersey Court of Chancery in the Ingersoll against Hahne case, decided August 24, 1919, said:

The proofs before me demonstrate that if defendant and others are permitted to pursue their practice of price cutting the business of complainant will be ruined, and thereby the volume of interstate trade be reduced, or a method of distribution will have to be adopted which will greatly increase the price to the consumer, which will necessarily result in reducing the volume of interstate traffic; that in either event competition will be effectively reduced. And to what purpose? So that retailers may make use of the trade name and good will established after extensive advertising to the extent that the public have associated with the article a standard of value, to fool the public into a belief that because a standard-priced article can be sold at a cut price all other goods are sold similarly low priced; in other words, to defraud the public.

The Supreme Court of the State of Washington in the Fisher Flouring Mills Co. against C. A. Swanson, decided December 13, 1913, said:

In the absence of a monopoly, either actual or potential, as above defined, a contract fixing retail prices to the consumer can not have an effect appreciably inimical to the public interest, because it can not fix prices at an unreasonably high figure without defeating its own purpose by either signally failing to maintain the fixed price, or putting the individual manufacturer out of business. In either case it fails to restrict competition. Either the consumers will not buy the product at the price fixed, or, if they do, the high price will stimulate competition in production and the price will inevitably fall. The given manufacturer will thus be compelled to accept one or the other alternative. He must either fix the price to cover only a reasonable profit, or he must retire from business, and this for the simple reason that, in the absence of a monopoly either actual or potential, of the entire supply, the natural conditions of trade will defeat any attempted restriction of competition. Under our present competitive system, the public is as vitally interested in the maintenance of competition in the excellence of the product as it is in competition of prices. The one is as essential to value received at any price as the other is to a reasonable price for any value. Lacking either, the public will eventually be the loser, either in quality of product or in enhancement of price, which comes to the same thing. No sound public policy will insist upon the complete sacrifice of competition in one of these elements to competition in the other. A monopoly, however, either complete or approximate, tends to the destruction of both, hence is on all scores against public policy. But where a given product is not in the hands of one man or a combination of men, there is no monopoly, either actual or proximate, and the public has no interest hostile to a contract by a single manufacturer among many, intended and reasonably calculated to enable him to maintain an unusual standard of excellence in that part of the aggregate of the given product which he puts out. On the contrary, the public interest, so far as it is touched by the contract, is in sympathy with it because served by it.

Finally, it seems to us an economic fallacy to assume that the competition, which in the absence of monopoly benefits the public, is competition between rival retailers. The true competition is between rival articles, a competition in excellence, which can never be maintained, if through the perfidy of the retailer who cuts prices for his own ulterior purposes, the manufacturer is forced to compete in prices with goods of his own production, while the retailer recoups his losses on the cut price by the sale of other articles, at or above their reasonable price. It is a fallacy to assume that the price cutter pockets the loss. The public makes it up on other purchases. The manufacturer alone is injured, except as the public is also injured through the manufacturer's inability, in the face of cut prices, to maintain the excellence of his product. Fixing the price on all brands of high-grade flour is a very different thing from fixing the price on one brand of high-grade flour. The one means destruction of all competition and of all incentive to increased excellence. The other means heightened competition and intensified incentive to increased excellence. It will not do to say that the manufacturer has no interests to protect by contract in the goods after he has sold them. They are personally identified and morally guaranteed by his mark and his advertisement. His reputation as a manufacturer, one of his chief assets, is bound up in them. The attitude of the respondent, who has willfully violated his contract, presents no equities in his favor. The allegations of the complaint show that the public interests will in nowise suffer from an enforcement of the contract.

The United States District Court for the Eastern District of Virginia, in the Colgate & Co. case, decided October 29, 1918, said:

In the view taken by the court, the indictment here fairly presents the question of whether a manufacturer of products shipped in interstate trade is subject to criminal prosecution under the Sherman Act for entering into a combination in restraint of such trade and commerce, because he agrees with his wholesale and retail customers, upon prices claimed by them to be fair and reasonable, at which the same may be resold, and declines to sell his products to those who will not thus stipulate as to prices. This, at the threshold, presents for the determination of the court how far one may control and dispose of his own property; that is to say, whether there is any limitation thereon if he proceeds in respect thereto in a lawful and bona fide manner. That he may not do so fraudulently, collusively, and in unlawful combination with others may be conceded. (Eastern States Lumber Association *v.* United States, 234 U. S. 600, 614.) But it by no means follows that being a manufacturer of a given article, he may not, without incurring any criminal liability, refuse absolutely to sell the same at any price or to sell at a named sum to a customer, with the understanding that such customer will resell only at an agreed price between them, and should the customer not observe the understanding as to retail prices, exercise his undoubted right to decline further to deal with such person.

It can not be said that the defendant has no interest in the prices at which its goods shall be sold. On the contrary, it had a vital interest, in so far as cutting the same would tend to demoralize the trade and might have been more injuriously affected by the result of this disorganization than the public would be benefited by a temporary reduction in the prices of its products. The sale of the defendant's particular soaps can not be said to be a necessity, or that the same bears a large proportion to the entire manufacture of soaps of the kind and grade involved. The successful prosecution of the defendant's business and the continued use of its soap by the public depend upon its ability to find and maintain a market for its output. Price cutting would almost inevitably result in reducing the defendant's business in a given community to only those engaged in that practice, and deprive it of the patronage of the great body of wholesalers and retailers engaged in what they believe to be a fair and legitimate conduct of their business. It by no means follows that in the end the public would be benefited, as the price cutter could easily raise prices, after the demoralization caused by his conduct had been brought about, and profit individually by so doing. What the public is interested in is that only reasonable and fair prices shall be charged for what it buys, and it is not claimed that the defendant's manner of conducting its business has otherwise resulted.

This case was appealed to the Supreme Court of the United States, which upheld the decision of the district court. The court said:

The purpose of the Sherman Act is to prohibit monopolies, contracts, and combinations which probably would unduly interfere with the free exercise of their rights by those engaged, or who wish to engage, in trade and commerce—in a word, to preserve the right of freedom to trade. In the absence of any purpose to create or maintain a monopoly, the act does not restrict the long-recognized right of trader or manufacturer engaged in an entirely private business freely to exercise his own independent discretion as to parties with whom he will deal. And, of course, he may announce in advance the circumstances under which he will refuse to sell.

Now, let me review some of the cases decided by the courts where the Federal Trade Commission sought to prevent maintenance of resale prices by various methods. Of course, all of these are subsequent to the Doctor Miles decision of the United States Supreme Court.

(A) AMERICAN TOBACCO CO. *v.* FEDERAL TRADE COMMISSION (9 FED. (2D) 570)

In this case the court held that the American Tobacco Co. was within its rights in declaring that it would not sell to jobbers who made a practice of selling to retailers at a price which made it impossible for jobbers to carry on their business at a reasonable profit. This sustains the right of manufacturer or wholesaler to maintain a retail price by the means adopted.

(B) HILLS BROS. *v.* FEDERAL TRADE COMMISSION (9 FED. (2D) 481)

The court held in this case that fixing and controlling resale prices by cooperation with salesmen and customers constituted an unfair method of competition.

Part of the method adopted to maintain resale prices was by means of a price bulletin furnished to the salesmen, who in turn informed the retail dealers. The contents of the bulletin was advertised in trade journals, a copy being mailed direct to the retailers, who were thus notified of any change in price. The manufacturer refused to sell retailers who sold for less than the minimum price quoted.

(C) JOHN MOIR ET AL. *v.* FEDERAL TRADE COMMISSION (12 FED. (2D) 22)

The court held in this case that there were expressed and implied agreements to maintain retail prices through "understandings" between the company and the dealers.

This is one of the cases where a manufacturer could never determine the limitations placed against him by the court in reference to resale-price maintenance.

(D) CREAM OF WHEAT CO. *v.* FEDERAL TRADE COMMISSION (14 FED. (2D) 40)

The court in this case enunciated a new doctrine in that it modified the order of the Federal Trade Commission by adding thereto the following:

Providing, however, that nothing herein shall prevent the respondent from performing the following acts:
(a) Requesting its customers not to resell Cream of Wheat at less than a stated minimum price.
(b) Refusing to sell to a customer because he resells below such requested minimum price or because of other reasons.
(c) Announcing in advance its intention thus to refuse.
(d) Informing itself, through its soliciting agents and through publicly circulated advertisements of customers which come to its attention, and through other legitimate means, without any cooperative action with its other customers or other persons as to the prices at which Cream of Wheat is being sold.

It will be thus seen that many of the practices heretofore condemned were herein approved.

(E) J. W. KOBI *v.* FEDERAL TRADE COMMISSION (23 FED. (2D) 41)

The court held in this case that by reason of the method adopted in securing reports on price cutting by requesting dealers and jobbers to report parties failing to maintain prices that such practices was an understanding or agreement constituting an unfair method of competition and should be condemned.

(F) TOLEDO PIPE THREADING MACHINE CO. *v.* FEDERAL TRADE COMMISSION (11 FED. (2D) 337)

The court wrote a very exhaustive opinion, and while in that case the order of the Federal Trade Commission was affirmed, yet the order was amended by striking therefrom the following, on the theory that such paragraphs, if allowed to stand, would deny the right of the respondent to select its own customers and to act on information which might come to it unsolicited:

By manifesting to dealers an intention to act upon all reports sent in by them of variations from resale discounts by the elimination of price cutters.

By informing dealers that price cutters reported who would not give assurance of adherence to the suggested resale discount would be refused further sales.

By employing its salesmen to investigate charges of price cutting reported by dealers, and by advising dealers of that fact; by which means consecutively or concurrently applied, the aid and assistance of dealers is sought and obtained in the prevention of departure from respondent's resale discounts.

(G) HARRIET HUBBARD AYRE, INC. *v.* FEDERAL TRADE COMMISSION (273 U. S. 759)

The order of the Federal Trade Commission was set aside in this case on the theory that there was no evidence disclosing cooperation on the part of jobbers and retailers which was "effective"; that there were no understandings, expressed or implied, "intended" to accomplish price fixing; that there was no employment of secret methods, and while the record disclosed occasional incidents of salesmen urging retailers to cut prices, yet such instances were not sufficient to establish "an understanding or agreement."

Mr. Chairman, the study of all these cases shows that the courts are hopelessly at variance on how far a vendor may go in maintaining resale prices by means of cooperation between manufacturer and wholesaler or retailer, or by way of agreements, expressed or implied.

Adding to the confusion is the recent consent decree issued by the United States District Court at Wilmington, Del., restraining the Gamble Stores and Gamble Skogno (Inc.) (100 stores in the Central Northwest States) from selling Weed Tire Chains below their retail list price. The American Chain Co. petitioned the court to stop price cutting and substitution of similar competing chains. Before the court passed on the case the Gamble interests agreed to desist from the practices complained of. The stipulation was accepted by the court, and a consent decree issued enjoining the defendants from—

Selling Weed tire chains at prices less than the current normal retail list prices at which Weed tire chains are sold by dealers to the public in territory where defendants maintain their retail stores and from advertising Weed tire chains for retail sale to the public at less than such current normal retail list prices; * * *

Then, following other clauses enjoining substitution of similar competing chains.

It was widely published that this consent decree showed the possibility of enforcing resale price agreements without the passage of this bill we are now considering.

However, it was recognized by those familiar with the case and the nature of a consent decree that it is not a precedent and binds no one except the parties involved. There was no determination of the rights of the parties and the situation is just as it was before.

During all this period, while the smaller, independent manufacturers were running the gauntlets of the courts with such varying results, the United States Supreme Court was upholding the right of the manufacturer to maintain prices on his products if he had capital sufficient to establish retail agencies of his own or consign his goods to retailers.

The Henry Ford Co. was given judicial benediction in its worthy desire to control the price of every car sold.

The General Electric Co. was assured it could sell its Mazda lamps at its own price through 33,000 retailers if it used the consignment system.

Exactly the same thing was condemned in the case of the smaller manufacturer trying to use the inexpensive contract which was commended in the great combination using the expensive agency and consignment system.

LEGISLATION THE ONLY REMEDY

In view of the situation I have outlined, is it any wonder the Federal Trade Commission could not proceed? In December, 1927, the commission said:

The question of resale-price maintenance is one of the most troublesome with which the commission has to deal in the present state of the decisions. The early Federal cases trace the principle to a passage in Coke on Littleton dealing with restraints on alienation. Courts in attempting to apply these ancient principles have fallen into hopeless confusion. Orders of the commission, issued under its organic act, have been upheld in some

circuits and set aside in others on almost undistinguishable states of facts.

And in a recent opinion in a case before the sixth circuit court of appeals, namely, the Toledo Pipe Threading Machine Co. against the Federal Trade Commission, decided in March, 1926, Judge Denison said that, in his opinion, "The state of the law as to price maintenance may rightly be said to be in confusion."

The remedy rests with Congress and this measure will meet the need.

In the Boston Store case, above-mentioned, the Supreme Court gave notice that price-maintenance relief would have to come, if at all, from Congress, and not from the courts. Mr. Chief Justice White said in that case, speaking for the court:

Moreover, as far as the argument proceeds upon the assumption of the grave disaster which must come to the holders of patent rights and articles made under them from the future application of the doctrine which the cases establish, it must be apparent that if the forebodings are real the remedy for them is to be found not in an attempt judicially to correct doctrines which by reiterated decisions have become conclusively fixed, but in invoking the curative power of legislation.

As ardent an advocate of price maintenance as Mr. Justice Brandeis, in concurring with Mr. Justice White in the same Boston Store case, said:

Whether a producer of goods should be permitted to fix by contract, express or implied, the price at which the purchaser may resell them, and if so, under what conditions, is an economic question. To decide it wisely it is necessary to consider the relevant facts, industrial and commercial, rather than established legal principles. On that question I have expressed elsewhere views which differ, apparently, from those entertained by a majority of my brethren. I concur, however, in the answers given herein to all the questions certified; because I consider that the series of cases referred to in the opinion settles the law for this court. If the rule so declared is believed to be harmful in its operation, the remedy may be found, as it has been sought, through application to the Congress or relief may possibly be given by the Federal Trade Commission which has also been applied to.

Even as untiring a believer in price maintenance as Mr. Justice Holmes, who dissented from the judgment of the court in the original case of Miles against Park apparently realized that there is little or no hope for price maintenance in the Supreme Court, following the long line of cases in which his ideas have been overruled. In his dissent in the Beechnut case he said:

There are obvious limits of propriety to the persistent expression of opinions that do not command the agreement of the court.

I have reviewed the status of resale prices from the common law to the present. The Supreme Court decision in the Doctor Miles case overthrew the precedents and an age-old system of business.

Since then, court after court has given decisions, making unanswerable arguments for the right and the necessity of makers of standard goods to name the resale price.

It takes a long, long time to change a decision of the nine men who make up the Supreme Court.

When the Supreme Court said the income tax of 1894 was unconstitutional, it required 19 years to adopt a constitutional amendment authorizing such taxes.

But there is a higher power in this land than even the Supreme Court. Enlightened and determined public opinion is the master of Congress and courts, however rugged the road to such mastery.

There is an enlightened and determined public opinion demanding the protection of the public against monopoly in distribution. The weapon of unfair competition must be taken from would-be monopolists. That is what this bill provides, and it should have the support of every upholder of the square deal in American business. It will make the law square with what every honest business man knows to be just and fair.

FURTHER DELAY IS FATAL

Mr. Chairman, more than 15 years ago I stood on this floor and pointed out the self-evident truth that predatory price cutting on standard, trade-marked goods leads straight to monopoly merchandising. I stated then that if this method of unfair competition were permitted to continue unchecked it would mean the destruction of independent business men at the hands of consolidated capital, extending chains throughout the country.

At that time the menace was like a cloud no larger than a man's hand. To-day it is a storm which sweeps through independent American business, leaving wreck and ruin in its path. It is worse than a storm. It destroys a man's business, but it also makes it impossible for him to return and build again on the ruins of the old structure. It destroys his faith in his government, which will neither of its own motion secure a square deal for him nor permit him to act in his own defense.

Fifteen years ago chain stores did less than one-half of 1 per cent of the total retail business of the United States.

To-day they are doing 22 per cent of all the retail merchandising of the country. Every day $30,000,000 goes over their counters.

Let them continue their cut-throat competition without restrictions for five years more and they will be doing 60 per cent of all retail business.

Then there will be seen the real power of the most pernicious monopoly of all—that which controls the retail trade in those things upon which human welfare, even life, depends. Then it will be understood how little it has profited America to sell its birthright of equal opportunity through fair competition for a few cents savings on a few standard products.

Such an outcome can be prevented, but it requires action without further delay. It must be remembered that there is a difference between monopoly in merchandising and monopoly in production. It requires a vast amount of capital to control a major part of the production of any of the great staple commodities. There are billion dollar corporations which do not have a monopoly.

On the other hand, the entire retail trade of a community may be monopolized by chain stores on a relatively small capital. Let that situation extend into many communities and the dangers to America become greater than those from all other monopolies combined.

There are some chain stores which prosper because of their efficiency and fair methods. These offer no monopoly threat, since they can be met by independent merchants who have certain advantages which compensate for the large operations of the chains.

But at least 50 per cent of the mushroom growth of chain stores during the past 15 years has been due to viciously unfair competition in prices on standard, identified goods.

I have not contended that the Government should take a stand against chain stores solely because chain stores hurt independent business men.

I have declared and do now declare that the Government, representing the public welfare, must take a determined stand against the unfair and unjust practices by which chain stores hurt independents.

In this bill under consideration we are not asking that the Government put its heavy hand upon a potential monopoly, which is steadily moving toward a position where it will control both the market where it buys goods and the market where it sells them.

We are not asking even the action which the Government took when it obtained the packers' consent decree in 1920. In that suit the Government charged that the packers' "attempts to monopolize have resulted in complete control in many of the substitute food lines. They have made substantial headway in others. The control is extensively and rapidly increasing. New fields are gradually being invaded, and unless prevented by a decree of the court the defendants will within the compass of a few years control the quantity and price of each article of food found on the American table."

Mr. Chairman, every word in that declaration can be applied with equal force to the chain-store systems. Because they work from the retailing angle back to manufacturing, instead of a plan like the packers, from manufacturing to retailing, the danger of monopoly control is not lessened.

We are not asking any chain-store decree by the court. We are not asking that the Government put its restraining

hand on this consolidated business. We only ask that independent business men be given a chance, through fair and free contract, to protect themselves against fraudulent and destructive competition.

This bill does not guarantee profits to any manufacturer or dealer. Unsold goods will bankrupt any manufacturer or dealer. And if prices are not right on competing goods you may be sure the goods will remain unsold. The right to name the uniform price of an identified product is a right which can only be exercised at the peril of the maker.

That is not a matter of prediction but of known experience. Right now every huge manufacturing concern which has capital enough to establish its own retail agencies, or to consign its goods to dealers, can fix and maintain the price of every unit.

Henry Ford has the legal right to make any price he pleases for his car. He can fix the price at $5,000 and maintain it for every car sold. Why does he not do so? Because no one would buy the car at that price. Ford has struggled during his entire career to get the price of his car down to the lowest point possible. He knows that the lower the price the wider the market and the greater the sales and profits. He insists, however, that the price be uniform and protected from price cutters. Without such protection there would be no automobile industry such as we have to-day.

The smaller, independent manufacturers of branded products have no such protection at present. We have one law for Peter and another for Paul. The very first essential of a square deal is that under like conditions all should be treated alike.

If price maintenance is right for Henry Ford, it is right for the small manufacturer of a guaranteed, identified product.

Congress can not perform a better act than to declare the public policy involved in this bill. Congress should in all justice declare that it is legal for the independent business man to exercise freedom of contract for the protection of his honestly conducted business against unfair competition. That he shall have the right to prevent the interference and restraint due to the fraudulent practices of huge combinations which endeavor to destroy competition through price juggling on standard, identified goods.

Mr. Chairman, this question touches every phase of business life and thus every phase of community welfare. This morning I received a letter from independent retailers, organized here in Washington. They stated that the entire milk supply of this District is being concentrated in the hands of a combination with headquarters in New York City. These independent dealers who handle between two and three million quarts of milk have been refused assurance of supply for their customers.

They state that they fear a price-cutting war if an independent dairy company should enter the field, and prices be put at such a level that it would mean destruction. This cutthroat system of business has many angles. We can and should deal with it wherever we can.

Mr. Chairman, I know that there are Members here who, in all honesty and sincerity, feel that the results of this measure may be injurious. They fear that the resale price contract may give power to establish high prices. They fear that consumers will be deprived of 9-cent and 11-cent and 13-cent bargains. They are afraid that they will meet criticism from constituents, who see nothing behind the so-called bargains on nationally known goods.

Let me say that I have been honored a number of times with the complete confidence of my congressional district, the greatest industrial district in the world. Every family in my district must secure the things upon which their lives and happiness depend from retail establishments. There is nothing that district could ask me to do in the way of expenditure of time and effort, to add to the betterment of their lives and the increase of their happiness, that I would not do eagerly and gladly.

I have tried always to help them—never to hurt them. If this bill meant that the income of those families and others like them over the entire Nation would buy less value than it does to-day I should be here urging its defeat. I am here to urge its passage with all my heart, because I know it will do more to assure lower and fairer prices on all the goods bought than any bill we have had before us in years.

For 15 years I have urged adoption of the principle of this bill by the Congress of the United States. Before large meetings I have debated with the heads of certain business organizations which profit from the evil practice we seek to prevent. There is no argument in the minds of the Members here to-day that has not been raised and answered in these gatherings, where very shrewd, practical business executives fought against any interference with their desire to continue a cutthroat practice which injures everybody but themselves.

Here is a test of the purpose of this House. It is all I have ever asked. I have every confidence that the Members here are believers in fairness and justice and that you will support the just principle in this bill. It means fair play for the independent business men, and it means fair play for every consumer in the land, both as a buyer of goods and as a member of the community. I ask your support for the bill. [Applause.]

The CHAIRMAN. The time of the gentleman from Pennsylvania has expired.

Mr. PARKER. Mr. Chairman, I ask unanimous consent that the amendment may be read in lieu of the bill.

Mr. PARKS. Mr. Chairman, has all debate been exhausted?

The CHAIRMAN. There remains one minute at the disposal of the gentleman from Texas. Does the gentleman wish to submit an inquiry?

Mr. PARKS. I do not know whether it is a parliamentary inquiry or not, Mr. Chairman. I was about to ask the Chair if he had any means of knowing how much time had been accorded to the proponents and how much to the opponents of the measure. I do not know whether that is a parliamentary inquiry or not.

The CHAIRMAN. The time was equally divided between the proponents and the opponents of the bill.

I take it the request of the gentleman is that the amendment be read in lieu of the original bill for purposes of amendment.

Mr. PARKER. Yes.

Mr. HUDDLESTON. Mr. Chairman, I wanted to suggest that we have an opportunity to amend the amendment, and I was going to suggest in line with that that we consider the amendment as the original bill.

Mr. PARKER. That is what I intended by my request.

The CHAIRMAN. That is the request as the Chair understands it.

Mr. COX. Mr. Chairman, a parliamentary inquiry. When will an amendment to the bill be in order?

The CHAIRMAN. As each section of the amendment is read the section will be open to amendment, just as though the original bill were being read.

Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read as follows:

That no contract relating to the sale of a commodity which bears (or the label or container of which bears) the trade-mark, brand, or trade name of the producer of such commodity, and which is in fair and open competition with commodities of the same general class produced by others, shall be deemed to be unlawful, as against the public policy of the United States or in restraint of interstate or foreign commerce or in violation of any statute of the United States, by reason of any agreement contained in such contract—

That the vendee will not resell such commodity except at the price stipulated by the vendor.

Mr. COX. Mr. Chairman, I move to strike out the last word.

Mr. Chairman and my colleagues, I have had my say on this measure. I have endeavored to the limit of my ability to demonstrate to the Members of the House that it is an unwise proposal. I make no pretension, Mr. Chairman, to a better understanding of the provisions of the bill than other Members. I approached my study of it with the sin-

cere desire of satisfying my own sense of political and moral responsibility.

My situation, Mr. Chairman, is no different from that of other Members. Organized minorities have pressed me the same as they have pressed them, and in ignorance, Mr. Chairman, as to the meaning of the measure I promised support; others may have done likewise.

I have the ambition to continue my service in this House, but whether that honor shall be mine ought to depend, if it does not depend, upon how worthily I serve. I can not believe that it would be worthy of me to support a measure that rewards the few and penalizes the many. But I have endeavored to be fair and candid in every statement I have made. This bill, as I see it, is an oppression and can but accentuate the discontent that spreads all over the country, that is so disturbing to those who read the future in the light of the past.

To me it is inconceivable that here at a time when millions of our own fellow Americans are in want, their life depending on the charity of the country, that this House should be seriously considering the enactment of a price enhancement bill.

I think it was Jack London who said—

> The entire staircase of history resounds with the echo of high heels descending and wooden shoes going up—

and if I were asked, What is the meaning of all this rumbling that comes to us from the four quarters of the globe? I would answer it is but "the echo of high heels descending and wooden shoes going up."

Mr. Chairman and my colleagues, for the sake of the public peace and the national welfare, for the sake of the reputation of this House, for sanity of thought and morality of conduct this bill must not pass. [Applause.]

This is a problem for the individual Member of the House. My belief is that the welfare of the public is safe in the fact that the membership will meet the issue undaunted and unafraid. [Applause.]

Carlyle said in his History of the French Revolution that sin has been, is, and will ever be the parent of misery.

Pass this bill, Mr. Chairman, and its fruit will be added misery to the millions of the country who are calling upon Congress for support. The bill, Mr Chairman, is not worthy of the support of high-minded and patriotic Members. [Applause.]

The CHAIRMAN. The time of the gentleman from Georgia has expired.

Mr. EATON of Colorado. Mr. Chairman, I offer the following amendment:

The Clerk read as follows:

> Page 4, line 13, after the word "vendor," strike out the period and insert "and/or that the vendee will require any dealer to whom he may retail such commodity to agree that he will not in turn resell except at the price stipulated by such vendor, or by such vendee."

Mr. EATON of Colorado. Mr. Chairman and ladies and gentlemen of the committee, I think the gentleman from Maine [Mr. NELSON] best characterized the bill this morning when he told the story of the man who bought the bag of fertilizer and said that the smell of the inside did not come up to what was stated on the label outside.

The amendment I propose is to again bring into the bill what its proponents say for it. It proposes to replace in the bill the paragraph that you will find on page 2 of the bill that was in it when the bill was first introduced in this Congress on April 25, 1929. As the bill was amended by the committee and now stands, it provides for an absolute resale contract—a contract between the producer and the retailer—to be absolutely binding as between the two covering the resale price of the producer's commodity. But if the producer sells to a wholesaler or to whatever other name you may call him, a middleman or a jobber, there is nothing in the bill as rewritten that makes that second contract binding his customer to the predetermined resale price. It is said by the proponents of this bill that the words "vendor and vendee" carry through right along from one sale to the other, and the gentleman from Pennsylvania [Mr. KELLY] agrees with gentleman on the other side [Mr. Cox]; but in the last paragraph of the bill there is a definition of the word "producer." The person who is protected in this bill, if there is any protection, is the producer, and it is said in the language of the bill in section 4 that producer means "the grower, packer, maker, manufacturer, or publisher." Which one of those words covers the jobber or the middleman, the man who is a part of the established distributing system throughout this country?

If you guess "packer" or any other one of those words, it requires a stretch of the imagination to make it cover any legitimate jobber.

The druggists believe that the bill before this House will stop price cutting. Will it? Read it and see. Will Mr. KELLY or anyone else point out the words which will prohibit price cutting?

Whatever words would produce that result in previous bills have been very carefully stricken out of this bill. All that this bill does is to attempt to make legal that part of a contract between the owner of a trade-mark and his immediate vendee, a promise on the part of that vendee to resell the trade-marked goods at a specified price. If the vendee fails to do so, he may be guilty of breach of contract and suffer any damages or other fair retaliatory measures which the owner of the trade-mark may obtain in a court or otherwise seek to impose upon him.

Price cutting may or may not be pernicious or predatory trade practice. It depends on the occasion and the commodity, and possibly the place. Where local conditions make price cutting the best means of competition the merchants make it so by their own practices. Whether the consumer benefits or not is a question which I will not attempt to answer at this time, for it is not the consumer who has come here for this legislation. If I can read my mail correctly and understand those who have talked with me, it is a certain group of retail druggists who want this legislation, and they are certainly entitled to our very best consideration and, if they have made a case, to some remedy.

The remedy they are now seeking is not a compulsory process. It provides an option to a trade-mark owner to sell his goods only to those who will agree with him and keep their contract to resell at a stated price. It goes no further. In fact, it does not go all the way, for circumstances are set forth in the bill under which a vendee may sell price-fixed goods at less than the agreed fixed resale price.

The original bill attempted to legalize a practice by a manufacturer to not merely impress upon his immediate vendee the prohibition against changing a predetermined retail price of an article but also to compel that vendee to extend the same covenant of the sales contract against a cut price against the next vendee, and so on, by what may be termed a covenant running with the trade-marked goods, until the ultimate consumer was reached.

To anyone who has had actual experience in merchandising and whose experience has taught him the ordinary as well as the legal interpretation of words, a reading of the bill before us shows that it does no such thing.

I trust that my position on this bill will be fairly understood. I do not want anyone here or any other place to state or intimate that I am trying to uphold unfair trade practices. In my practice as a lawyer I have handled a number of cases on this subject, and in each one I was trying to break down unfair practices. Perhaps you may like the term "unfair competition" better. But, whatever name you use, I want it understood that I am now, and heretofore have been, opposed to unfair practices in trade. The only difficulty that I have had has been in getting a court to agree with me that certain practices charged have been unfair in law, no matter how unfair in fact the complainant alleged them to be.

A lot has been said of the decisions of the United States Supreme and other courts. Examination of them quickly shed a light on each decision. And whether you agree with a particular decision or not—and the judges frequently did not all agree with the decision promulgated—you will

find that each one was actually decided on the question of fair trade, or fair competition, or "freedom of trade," as one judge expressed it.

Justice Hughes said in one of the cases:

The contractor may not, by rule or notice, in the absence of contract or a statutory right, fix prices for future sales.

While those words, standing alone, are an accurate statement of the law of sales of personal property, it requires more than that sentence to understand the situation. For example, a conditional sale may be lawfully made; in many of the States a statutory method is imposed so that in so far as the statute is complied with the conditions may be enforced. In no case submitted for my examination was any attempt made to follow the statutory method to control a conditional sale, if the case fell into that class. And whether you want to call a definite resale price a condition in a sale, or seek to call it by some other name, the result is the same. And that result is an attempt to modify the centuries-old rule of the law merchant and the common law, that the owner of personal property may do with it as he sees fit. He may sell it, or keep it, or destroy it. He may set the price high or low. He may change the price at will. One element of personal property is that practically no restrictions against alienation of it are recognized in the law. The quarrel is centuries old. As to real estate, it is the subject of one of the most interesting of the historical chapters of the law, and to-day ancient statutes furnish the foundation of the statutes of most of the States which set forth the extent to which alienation of real property may be restricted. The very basis of many unfair trade practices is the attempt to restrict or control the title to personal property after it has been sold in effect, if not in fact.

One of the laws of contract is: If a restraint upon one party is not greater than the protection to the other party requires, then such a contract may be sustained. This rule is also sought to be changed by this bill. No reciprocal right is given to a buyer to compel the owner of a trade-mark to furnish him the goods which he may desire to sell. A right is given only to the owner of the trade-mark to contract with his immediate vendee as to the resale price and enter into a valid, binding contract with him. I find in the reported cases several instances where the resale contract has been fair enough to obtain a favorable decision; in every one of the others the absence of fair reciprocal rights is easily apparent.

I do not find it hard to agree that what a man contracts to do, he may be compelled to do, providing it is not unlawful.

But this bill does no such thing. It does not control the resale price beyond the first vendee unless that vendee is a retailer. If this bill were passed, would not the result be that only these trade-mark owners who had the largest available capital would be able to continue in business? For they are, theoretically, at any rate, the only ones who have sufficient capital to sell directly to the retailer. Those whose capital do not permit them to seek the retail trade, and who must do all of the distant business through jobbers, will be limited to their close-by market. The proponents of the bill say that exactly the opposite will be the effect of this bill. I have examined it time and again. I have had a number of interviews. And from them all I find that those who take that position draw their conclusions from premises of their own, and not from the text of this bill.

I have before me a copy of a report of Hon. W. A. Hover, of Denver, as chairman of the special committee of the National Retail Druggists' Association, in which is included a resolution instructing the committee of legislation of the association—

To use their best efforts in behalf of legislation that will permit manufacturers in some practical manner to control the resale price of his products through the distributor to the ultimate consumer.

Mr. Hover's very interesting 10-page statement proves by the resolution to be a plea on behalf of the jobbers or "distributors," as he terms them. He says that—

Price maintenance is the right of the individual manufacturer to elect the conditions under which the article that he produces shall reach the ultimate consumer, and involves questions that in character are both economic and social. * * *

It is to the interest of the manufacturer, as well as the consumer, that channels of distribution should at all times remain open and free of obstruction. * * *

The manufacturer can not, unless he is prepared to meet the expense of direct distribution, fail to recognize the unity of interest between himself and the distributors.

But the H. R. 11 before us does not grant the contractual rights contended for by Mr. Hoover. The paragraph which would do so has been stricken from the bill. In the original bill the following appeared:

That the vendee will require the dealer to whom he may resell such commodity to agree that he will not in turn resell except at such a price stipulated by such vendor or by such vendee.

Why is this stricken out? Is it for the benefit of the manufacturer or the retailer? Or the consumer? At any rate, it is not for the benefit of the distributor or jobber. Where will he stand? My prophecy is that he will become the mere vehicle of cut-rate prices; and that manufacturers who can not afford independent distributing systems will find their business circumscribed to a small local area, except as they use the facilities of the established jobber, and that those other manufacturers will use the same jobbers at such times and places as they wish to encourage their trade by permitting resale prices at retail to take a local competitive course.

The gentleman from Pennsylvania [Mr. KELLY] says:

We say that all predatory price cutting on identified goods is an evil, and we propose to put in the hands of independent manufacturers and retailers the right to protect themselves against it.

He also says:

Fair competition best regulates fair prices.

But this bill does not state anything about competition. On the other hand, it states that prices may be determined by the producer.

If I remember anything about buying and selling goods at wholesale and retail, predetermined priced goods all fall in one lot in the jobber's and retailer's life. He is at the mercy of the producer; he must bow the head to the orders received from the salesmen or those "higher up" who give the instructions. He must buy so many dozen. He must give window and counter space. He must arrange for periodical advertisements. He must answer the carping criticisms of why did you not do this, or why did you do that?

I am willing at any time to join in any effective legislation which is necessary to produce a square deal in business and for the public good.

But I can not bring myself to believe that the bill now before us does any such thing. In fact, it does not support the argument of the man who spoke so feelingly about the square deal. I do not question his sincerity, but I do question his interpretation of the words submitted in this bill. Let me state the words of the bill that we are discussing right here, so that you can interpret them for yourself:

H. R. 11

(As amended by the Committee on Interstate and Foreign Commerce)

* * * * * * *

That no contract relating to the sale of a commodity which bears (or the label or container of which bears) the trade-mark, brand, or trade name of the producer of such commodity, and which is in fair and open competition with commodities of the same general class produced by others, shall be deemed to be unlawful, as against the public policy of the United States or in restraint of interstate or foreign commerce or in violation of any statute of the United States, by reason of any agreement contained in such contract—

That the vendee will not resell such commodity except at the price stipulated by the vendor.

SEC. 2. Any such agreement in a contract in respect to interstate or foreign commerce in any such commodity shall be deemed to contain the implied condition—

(a) That during the life of such agreement all purchasers from the vendor for resale at retail in the same city or town where the vendee is to resell the commodity shall be granted equal terms as to purchase and resale prices;

(b) That such commodity may be resold without reference to such agreement—

(1) In closing out the owner's stock for the purpose of discontinuing dealing in such commodity or of disposing, toward the end of a season, of a surplus stock of goods specially adapted to that season;

(2) With notice to the public that such commodity is damaged or deteriorated in quality, if such is the case; or

(3) By a receiver, trustee, or other officer acting under the orders of any court or any assignee for the benefit of creditors.

SEC. 3. Nothing contained in this act shall be construed as legalizing any contract or agreement between producers or between wholesalers or between retailers as to sale or resale prices.

SEC. 4. As used in this act—

(1) The term "producer" means grower, packer, maker, manufacturer, or publisher.

(2) The term "commodity" means any subject of commerce.

Now look at this bill, which is H. R. 11 as it was originally introduced in this House on the first day of the Seventy-first Congress, April 15, 1929:

Be it enacted, etc., That no contract relating to the sale or resale of a commodity which bears (or the label or container of which bears) the trade-mark, brand, or name of the producer or owner of such commodity, and which is in fair and open competition with commodities of the same general class produced by others, shall be deemed to be unlawful, as against the public policy of the United States or in restraint of interstate or foreign commerce or in violation of any statute of the United States, by reason of any agreement contained in such contract—

(1) That the vendee will not resell such commodity except at the price stipulated by the vendor and/or

(2) That the vendee will require any dealer to whom he may resell such commodity to agree that he will not in turn resell except at the price stipulated by such vendor or by such vendee.

SEC. 2. Any such agreement in a contract in respect of interstate or foreign commerce in any such commodity shall be deemed to contain the implied condition that such commodity may be resold without reference to such agreement—

(1) In closing out the owner's stock for the purpose of discontinuing dealing in such commodity;

(2) With prominent notice to the public that such commodity is damaged or deteriorated in quality, if such is the case; or

(3) By a receiver, trustee, or other officer acting under the orders of any court.

SEC. 3. Nothing contained in this act shall be construed as legalizing any contract or agreement between producers or between wholesalers or between retailers as to sale or resale prices.

SEC. 4. No suit arising out of any such agreement shall be brought in any court of the United States in any other judicial district than that in which the defendant is an inhabitant, or in which he has a regular and established place of business. If such suit is brought in a district in which the defendant has a regular and established place of business, service of process, summons, or subpœna may be made by service upon the agent or agents engaged in conducting such business in the district in which suit is brought.

SEC. 5. As used in this act—

(1) The term "producer" means grower, packer, maker, manufacturer, or publisher.

(2) The term "commodity" means any subject of commerce.

(3) The term "interstate or foreign commerce" means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia.

SEC. 6. If any provision of this act is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of the act and the applicability of such provision to other persons or circumstances shall not be affected thereby.

Personally I would like to vote for a bill written by and supported by the gentleman from Pennsylvania [Mr. KELLY]. I know his sincerity and desire to remedy certain trade practices which are unfair. But I submit that this bill does not do so, and that the amendment proposed should be adopted.

Mr. MAPES. Mr. Chairman and members of the committee, fortunately it is not necessary, as the gentleman from Georgia [Mr. COX] has indicated, for any one to question the motives of any one else on this floor in connection with this bill. One of the things that membership in the House of Representatives teaches one is to respect the motives and purposes of those who disagree with him. There is no question about the sincerity of the gentleman from Georgia in his opposition to this bill or of anyone else who opposes it in my judgment, or of those who favor it. Personally, I do not consider the legislation as serious as does the gentleman from Georgia and some of the other Members of the House. The statement has frequently been made that it will revolutionize merchandising. Individually, I don't think it will do any such thing. For the most part merchandising in this country is now conducted along the line that this bill would provide. All trade-marked and branded articles that are manufactured by the big manufacturers of the country, those who can maintain a large selling force and who have their own wholesale agencies, are sold now exactly as this bill makes it possible for the retailer and the manufacturer to contract to do. One who goes to any of the stores in Washington or any other city to buy a suit of Stein-Bloch, Hickey-Freeman, or Kuppenheimer clothes, or a Manhattan shirt or an Arrow collar or a suit of trade-marked underwear can not do so without paying the price that the manufacturer has told the retailer that the article ought to sell for. The law, as I understand it to-day is this, that a manufacturer can sell his article to a retailer and can suggest to the retailer the retail price that ought to be charged for it, and can go so far as to tell the retailer that if he sells it below that price he will take the commodity away from him; and the large fellows maintain that practice, but they can not go so far, they violate the law if they go so far as to exact a definite contract or agreement from the retailer to maintain any given price. Under that condition of affairs the big fellows can maintain their prices, but the small manufacturers can not do so.

There has been a good deal of talk about the effect this will have upon the chain stores and the big department stores. This is what happens, according to the proponents of this legislation. The chain stores will put a store in a neighborhood and for the purpose of attracting trade and making the consumer believe that the chain store is selling all merchandise, branded or unbranded, at a lower price than the independent, they advertise some of these trade-mark or branded articles at a price below what they cost in some instances, sometimes below the wholesale price, and the public goes to that store to buy the articles thus advertised. They go to the chain store until the competing independent grocer is forced out of business, and then the chain store puts up the price. The operators of the chain store can afford to lose on that particular store temporarily or until they get rid of the competition in that neighborhood, because they make it up on their other stores in other localities. In the same manner the big department stores, having many departments, can operate and sometimes do operate a certain department at a loss until they destroy competition in the goods handled by that department.

The CHAIRMAN. The time of the gentleman from Michigan has expired.

Mr. MAPES. Mr. Chairman, I ask unanimous consent to proceed for 10 minutes.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. MAPES. The public gets into the habit of going into these places to buy the trade-mark article which is being sold at less than cost, and the independent merchant is obliged to cease carrying that particular article, and then after the independent merchants have ceased to handle the article the big department stores and chain stores can put any price they see fit on it.

Mr. HUDDLESTON. Mr. Chairman, will the gentleman yield?

Mr. MAPES. Yes.

Mr. HUDDLESTON. Will the gentleman explain why an independent with a single store can not indulge in this same unfair competition that he says the chain store can, if he has sufficient capital and is game enough to do it?

Mr. MAPES. He has not the capital. It is just the same as with the big oil companies that extend over the United States. They can reduce the price of oil in any State below the cost of production until they force out the independent dealer, and then put the price up again. They are able to make up their losses in the one State from their profits in the other States. The independent merchant like the independent oil dealer can not do that and can not compete against such unfair competition.

Mr. HUDDLESTON. Of course, it is gratuitous to assume that this independent merchant has not the capital.

Mr. MAPES. It is a matter of common knowledge, it seems to me. A lot has been said to the effect that there have been no hearings on this bill. Since I have been in Congress there have been extensive hearings on this general proposition at two different times. We had hearings as late as 1926 on this subject.

It is folly to say we have not had hearings on this bill. This bill was treated the same as all legislation is treated by a committee. After the hearings were closed the committee held an executive session, not in the same Congress, but in the next Congress, and revised the bill and reported out this substitute, with the personnel of the committee about the same.

Mr. COX. Will the gentleman yield?

Mr. MAPES. I yield.

Mr. COX. Did the gentleman from Michigan join in this report of the committee, reporting this bill to the House?

Mr. MAPES. I did.

Mr. COX. Did the gentleman agree that it did not relate to the necessities of life, and therefore would not increase the cost of living?

Mr. MAPES. Well, I think that is quite immaterial.

Mr. COX. Does the gentleman now concede that it does relate to the necessities of life?

Mr. MAPES. I refuse to yield further. I understand the gentleman's position. If necessities of life are trade-marked or branded and the producer and the retailer see fit to enter into this contract, then it would apply.

I think the membership of the House should bear in mind that this bill does not require anything. It is not compulsory upon anybody. It leaves it entirely optional between a producer and a buyer as to whether they will enter into this contract or not.

Somebody has said it will prevent bargain sales. This legislation will not prevent bargain sales. These will be the same bargain sales on all unbranded articles at all times as there are now, and there will be the same bargain sales at the end of season as there are now for all trade-marked articles. Those of you who have been following the papers the last few weeks know that trade-marked articles have been selling at a discount for some time now. This bill expressly provides that bargain sales may be had at the end of a season, to get rid of surplus stock.

Now, as to the pending amendment, the Committee on Interstate and Foreign Commerce considered this amendment. This bill, or the amendment as reported by the committee, in the judgment of those on the committee who are supporting it, is a very mild affair. It is conservative. As I have stated, in my judgment it will not revolutionize merchandising at all, but it will correct some of the abuses of merchandising.

The committee considered this amendment and the majority were opposed to it. Some questioned its constitutionality and others thought it was better to limit the law to the original sale only, and therefore the committee did not accept it. I think it is better to pass the bill as reported by the committee, without loading it up with amendments here on the floor of the House which have not been carefully considered, and for that reason I think the amendment of the gentleman from Colorado [Mr. EATON] ought to be voted down.

Mr. LAGUARDIA. Mr. Chairman, I move to strike out the last word.

I was a little confused during the general debate on this bill, but after hearing the argument of the gentleman from Michigan [Mr. MAPES] who usually is a very clear thinker, I confess I am more hopelessly confused than before.

Now, I submit if you are going to do anything for these retail dealers, if you are on the level in supporting this bill, you can not consistently vote against the amendment of the gentleman from Colorado [Mr. EATON]. [Applause.]

Now, let us get down here and have a little frank talk. Are we kidding these poor retailers, or are we sincere in doing something for them? What does this mean? Here you have a proposition which permits A to sell to B for a certain fixed price, on condition that he will not undersell, but C may sell to D, the retailer, without any condition or restriction and he may cut prices and sell for any price he pleases. Yet, you say "vote against an amendment that will carry out the idea of the bill one necessary step further." That indeed is a strange proposition. Now, these poor retailers, over which some very sincere tears were shed on the floor of this House to-day are greatly interested in this measure. Their life and their hope and their future is based on this bill, and yet the gentlemen who purport or pretend to be for the bill, urge the voting down of an amendment that will make the purposes of the bill effective.

Now, I want to ask another question of the committee. I want to ask the gentleman from Pennsylvania [Mr. KELLY], the gentleman from Connecticut [Mr. MERRITT], and the gentleman from Michigan [Mr. MAPES] these questions: I have spoken to a great many retailers, and I say in all sincerity they believe that their future depends on this bill. I have asked them "What is your remedy when Mr. Macy or Mr. Wanamaker is going to undersell the independent retailer," and they have invariably answered, "Why, the Government will take care of it."

Now, before this is over, I am sure every lawyer on the floor of this House will want to know how this law is enforceable. Here are the questions:

First. Is it admitted that a violation of the contract or violation of the terms of this bill, if it becomes law, does not constitute a crime?

Second. Is it enforceable at the pleasure of the vendor and is there any machinery in law that you can move this vendor to move on the vendee who violates his contract?

Third. Is a competitor who is being injured by being undersold in violation of the terms of this agreement, competent to bring an action to enjoin a vendee who violates the agreement?

Now, gentlemen, this matter is serious. I think it was treated very lightly by some of the sponsors of the bill, and I say that not with any criticism, but I know the plight that some of these retailers are in, and if we are going to do something, let us not give them a "make believe" bill; let us not give them a piece of paper, but let us go the whole way, and as a token of good faith I want to see the gentleman from Pennsylvania [Mr. KELLY] and the gentleman from Connecticut [Mr. MERRITT] and the rest of the gentlemen who are for this bill stand up and support the amendment offered by the gentleman from Colorado [Mr. EATON].

Mr. KELLY. Will the gentleman yield? The gentleman has asked me a question and I ought to answer it.

Mr. LAGUARDIA. I yield.

Mr. KELLY. I introduced this bill with this section in it just as the gentleman from Colorado [Mr. EATON] offered the amendment. I shall vote for his amendment.

The gentleman says he has talked with retailers, and they think the Government will enforce this law. I also have talked to retailers, literally thousands of them, and I never heard a retail dealer ever suggest that the Government would undertake dealing with this. They are competent, with the independent manufacturer, to deal with that question. The red-blooded manufacturers who are dealing with independents and with chains will say to these big buyers, "You will either get the same prices as the independent or you will not handle my article," and they will either agree to handle it on a fair basis or they will not get the goods.

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. LAGUARDIA. Mr. Chairman, I ask unanimous consent to proceed for one additional minute.

The CHAIRMAN. Without objection, it is so ordered.

There was no objection.

Mr. LAGUARDIA. Permit me to say to the gentleman from Pennsylvania that these red-blooded manufacturers are cold-blooded business men, and they are going to sell their goods wherever they can, and unless you put teeth into the law it will not be worth while.

Mr. KELLY. They will have to choose the independents or the chains, and they will choose the independents.

Mr. COX. Will the gentleman yield?

Mr. LAGUARDIA. Yes.

Mr. COX. The amendment simply does this: It reinstates the bill as it originally appeared before the committee and it makes legal the chain system of contract that was dealt with in the Miles case in 1911. The chain system simply means this: That the manufacturer has the right by contract to fix not only the resale price but he may by contract fix the price to all the vendees and vendors and follow it to the consuming public.

The CHAIRMAN. The time of the gentleman from New York has again expired.

Mr. YON. Mr. Chairman, I offer an amendment to the amendment.

The CHAIRMAN. The gentleman from Florida offers an amendment to the amendment now pending, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. YON as an amendment to the Eaton amendment: Page 4, line 13, after the word "vendee," strike out the period and add the following: "which price shall have been printed in plain figures on original label or other identifying device on said commodity."

Mr. HOCH. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. HOCH. Was the amendment offered by the gentleman from Florida a substitute for the amendment offered by the gentleman from Colorado?

The CHAIRMAN. It was not. It was an amendment to the pending amendment.

Mr. YON. Mr. Chairman, I ask unanimous consent that the amendment offered by the gentleman from Colorado and my amendment thereto be again reported by the Clerk.

The CHAIRMAN. Without objection, the Clerk will again report the amendment offered by the gentleman from Colorado as amended by the amendment offered by the gentleman from Florida.

There was no objection.

Amendment offered by Mr. EATON of Colorado: Page 4, line 13, after the word "vendor," strike out the period and insert "and/or that the vendee will require any dealer to whom he may resell such commodity to agree that he will not in turn resell except at the price stipulated by such vendor or by such vendee."

Amendment to the amendment offered by Mr. YON: "which price shall have been printed in plain figures on original label or other identifying device on said commodity."

Mr. YON. Mr. Chairman, my idea in offering this amendment is to specify the price at which an article should be sold, when it is given consideration under a provision of law as provided in this bill. We know there are many proprietors of trade-marked articles and that it would be impossible to insert them in a bill like this. This bill affects the life of the Nation to a very great extent. Certain medicines, drugs, and many other articles are sold by the proprietary producer with the price printed on them when they are put out in their original packages. For instance, you take a bottle of soothing sirup. It may be put up to sell for 50 cents, but a cut-rate store will sell it for 35 cents or 39 cents. This is unfair competition.

I would like to support some legislation which would give every individual who is trying to do business a fair chance with everybody else. In my territory, as well as throughout the country, there are many merchants who are being driven to the wall and losing their lifetime savings because of the unfair competition they are having to meet through the great department stores and the chain stores.

In its entirety this measure does not meet with my approval. I do not believe that the people who have spoken to or written the Membership of the House have had an opportunity to study it and I do not believe they fully understand what it means. Many explanations of the bill have been made since it has been discussed on the floor but lots of fellows do not seem to understand it.

I do not want anyone to think I would support legislation which is inimical to the interests of the great mass of consumers of the country, as well as creating a hardship on the business life of our Nation, and especially that large class of small town and country merchants. They are made up of the best citizenship of my State, as well as that good and generous body of citizens that call on them, the traveling salesmen.

So for this reason I hope my amendment to the amendment will be adopted, because I think it will help the bill.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida to the amendment offered by the gentleman from Colorado.

The amendment to the amendment was agreed to.

The CHAIRMAN. The question is now on the amendment offered by the gentleman from Colorado as amended.

The question was taken; and on a division (demanded by Mr. PARKER) there were—ayes 136, noes 12.

So the amendment, as amended, was agreed to.

Mr. CELLER. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The gentleman from New York offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. CELLER: At the end of the amendment just adopted insert a new paragraph, as follows:

"That the Federal Trade Commission may, of its own initiative, or upon a petition in writing by a citizen, filed with such commission, fix and establish a fair and reasonable price at which any article coming under the terms of this act shall be sold, and shall for that purpose have access to all records, books, papers, accounts, secret processes, and formulas of the proprietor, manufacturer, or producer of such article which said commission shall deem necessary in order to enable it to fix and establish such price; that a price once fixed and established shall not be raised or increased without the authority of the commission so to do."

Mr. KELLY. Mr. Chairman, I make a point of order against the amendment on the ground it is not germane to either the section or the bill.

The CHAIRMAN (Mr. LEHLBACH). Does the gentleman from New York concede the point of order?

Mr. CELLER. I do not, Mr. Chairman.

The CHAIRMAN. The Chair will hear the gentleman from New York on the point of order.

Mr. CELLER. Mr. Chairman, this is a bill which enables a manufacturer or a producer to maintain the price at which a commodity may be resold by his vendee, and by the amendment just adopted the vendee's vendee.

This amendment sets up a method by which the reasonableness of that price may be tested. If the manufacturer demands the protection that this bill affords, he must on the contrary accept any restraint that the Congress may establish with reference to the method by which he can maintain his prices. I therefore maintain it is quite germane that some instrumentality or machinery be set up to control that method which we now give to the manufacturer or producer to maintain their prices.

The CHAIRMAN. The Chair is ready to rule. The purpose of the bill under consideration is to legalize certain agreements between private parties. The amendment offered provides for the Government to fix prices of commodities through the medium of the Federal Trade Commission, an entirely different proposition, and the point of order is sustained.

Mr. McSWAIN. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The gentleman from South Carolina offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. McSWAIN: Page 4, line 11, after the word "contract," strike out the dash and insert a comma and the following words: "But no such contract shall authorize the producer or manufacturer or packer giving a trade name, brand, or trade-mark to any commodity to fix or prescribe the retail prices of such necessities of life as meat and meat products, flour and flour products, agricultural implements, tools of trade, canned fruits and vegetables, all clothes, shoes, and hats."

Mr. McSWAIN. Mr. Chairman, ladies and gentlemen of the committee, I take it that the solemn statement under the sign manual of the committee is seriously and deliberately made, especially when we see the statement in the committee report that this bill does not purport to affect the necessities of life. To give anybody power to fix prices of things we

must have to eat and wear is dangerous. This is what the committee report says in so many words as plain as can be, and I take the committee at its word. [Applause.]

I take it they mean what they say, and therefore I ask you to say now by my amendment that it specifically does not include such necessities of life as meat and meat products, flour and flour products, clothing and all the incidentals of clothing, farm implements, tools of trade, and things like that. We can not now think of increasing the cost of living. If this, gentlemen, is the solemn and earnest intention of the proponents of this measure, then there can be no good reason or any just excuse for voting down this amendment. I think we are ready for a vote, and I now ask for a vote on the amendment.

Mr. BURTNESS. Will the gentleman yield?

Mr. McSWAIN. Certainly.

Mr. BURTNESS. Does the gentleman's amendment include necessary medical supplies and drugs?

Mr. McSWAIN. No; that was a serious and unintentional omission.

Mr. BURTNESS. I hope the gentleman will get consent to modify his amendment in that respect.

Mr. McSWAIN. Mr. Chairman, I ask unanimous consent to amend my amendment by including standard medicines.

The CHAIRMAN. Is there objection to the request of the gentleman from South Carolina?

Mr. KELLY. Mr. Chairman, I object.

The CHAIRMAN. The time of the gentleman from South Carolina has expired.

Mr. KELLY. Mr. Chairman and members of the committee, the gentleman from South Carolina [Mr. McSWAIN] is would-be witty and pseudo-facetious in attempting to tell the committee that this measure would inflict hardship regarding the necessities of life. There is no single trade-marked article that can be a necessity of life in itself.

I am saying that no single trade-marked article is a necessity of life. In the first place, no one can go to the Patent Office and get a trade-mark on a general class. You can not get a trade-mark on flour; you can not get a trade-mark on shoes; you can not get a trade-mark on sugar. All the producer does is to put his own name on the flour or his own name on the sugar or shoes; and the moment that is done then there are a hundred articles found to be in competition. Does anyone here think he can get a trade-mark on bread, as a general commodity?

Mr. COX. You have plenty of names on bread.

Mr. KELLY. Precisely, and they are in competition with each other. No one has to buy any single brand. There is the Bond bread, the Holmes bread, the Schneider bread, and the Jones bread, and many others; and each one is in competition with the others, and therefore there can be no unduly high prices as long as there is fair competition. No one who is not in competition can get any rights under this resale-agreement provision.

If you vote for this amendment, you vote to lessen the value of the bill very greatly. No such amendment should be adopted. Let us give a chance to the independent grocer to handle competitive articles of food on a square-deal basis and you may be sure the public will profit by it.

Mr. COX. Will the gentleman yield?

Mr. KELLY. I yield.

Mr. COX. The competition the gentleman refers to is the competition that there may be between that article and some other article that some one wants.

Mr. KELLY. Yes. That is the competition we are endeavoring to preserve, and this talk of the necessities of life is simply an attempt to confuse the issue. We want fair competition on these food products, and that will be assured under the terms of the bill as it stands.

Mr. MAPES. Mr. Chairman, I move to strike out the last word. Of course, this motion of the gentleman from South Carolina [Mr. McSWAIN] is equivalent to a motion to strike out the enacting clause of the bill.

There may be some commodities that are not embraced in the amendment, but not enough to make the legislation worth while if the amendment should be adopted. If the House is prepared to defeat the legislation, all right and good, then this amendment should be adopted; but before a vote is taken I would like to emphasize one feature of the bill.

There has been a good deal said this afternoon about the producer and the buyer fixing prices and charging anything that they see fit to charge. Nothing of that kind can happen.

In the first place, the contract authorized in the bill can not be made except on trade-mark articles which are sold in competition with articles of a similar nature.

No manufacturer is going to fix a price that will take his article off the market.

As one witness before the committee well said, in fixing the price the manufacturer must take into consideration six elements:

First. Of course he has to fix a price which will allow him a reasonable profit or he can not continue in business.

Second. He has to allow a reasonable profit to the wholesaler or he will not handle the product.

Third. The price must permit a reasonable profit to the retailer or he could not handle the article.

Fourth. The price must be reasonable to the public or the public will not buy the goods.

Fifth. The price must be reasonable in so far as other branded articles are concerned or his competitors will secure the favor of the public for their better-priced articles.

Sixth. The price has to be reasonable, as far as all the bulk or unbranded commodities are concerned, or the public will turn to the branded competitive product.

There is nothing in this legislation that is going to hurt anybody. As I have said, it is not going to revolutionize merchandising, and the majority of the committee thinks that it will correct some of the abuses in merchandising. If the Members of the House are in favor of this legislation at all, I think that this amendment ought to be voted down.

Mr. BUSBY. Mr. Chairman, will the gentleman yield?

Mr. MAPES. Yes.

Mr. BUSBY. In the report on price resale maintenance by the Federal Trade Commission at page 42 the question is asked of manufacturers, "Do you believe that the manufacturer has sufficient knowledge of retail conditions to fix the price charged the consumer?" Out of 849 answering the question, 305 answered "no" or refused to answer "yes." What is the gentleman going to do with those 305 out of 849 manufacturers who said that they were not qualified to fix prices to the consumers?

Mr. MAPES. Under this bill they would have to fix a price that the retailer, who is familiar with retail prices, would agree to, or they could not make the contract.

Mr. BUSBY. They say that they are not qualified to fix the price.

The CHAIRMAN. The question is on the amendment offered by the gentleman from South Carolina.

The question was taken; and on a division (demanded by Mr. KELLY) there were—ayes 126, noes 88.

Mr. KELLY. Mr. Chairman, I demand tellers.

Tellers were ordered, and the Chairman appointed Mr. KELLY and Mr. McSWAIN to take their places as tellers.

The committee again divided, and the tellers reported—ayes 140, noes 94.

So the amendment was agreed to.

Mr. O'CONNOR of New York. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. O'CONNOR of New York. Would it be in order at this point in the reading of the bill to move to strike out the enacting clause?

The CHAIRMAN. The motion is privileged and in order at any time during the reading of the bill.

Mr. O'CONNOR of New York. Then, Mr. Chairman, I so move.

The CHAIRMAN. The gentleman from New York moves that the committee do now rise and report the bill back to the House with the recommendation that the enacting clause be stricken out.

Mr. O'CONNOR of New York. Mr. Chairman, I wish to be heard on the motion.

The CHAIRMAN. The Chair recognizes the gentleman from New York.

Mr. O'CONNOR of New York. Mr. Chairman and members of the committee, I have been waiting here for some time for some member on the Committee on Interstate and Foreign Commerce to make this motion. I hesitate to make it because I do not wish to intrude into the affairs of that committee. However, I know, as most of the membership of the House know, that it was never seriously intended that this bill should be brought up before the House, and by reason of the adoption of the amendments just agreed to, it is obvious that sabotage is being practiced—that the House is doing indirectly there what it has not courage to do directly—kill this bill.

For at least 14 years this bill has been before the committees of the House. The last hearing was held in 1926 and ended what was then thought to be the life of the consideration of the bill.

Last year before the Committee on Rules, nine members of the Committee on Interstate and Foreign Commerce appeared and asked for the rule which was adopted to-day.

The Rules Committee tried diligently but could not find out from among those members, except possibly one, how anyone stood on the bill. One Member of the House asking for the rule, said, "Oh, let's put it out and pass it or kill it." On such an appeal the Rules Committee reported a rule. The Rules Committee took the action it did solely because the "buck" had been passed to the Rules Committee. Propaganda had flooded the country addressed to the Rules Committee, charging that committee with holding up consideration of the bill. The application was made toward the end of the session, and the bill was supposed to be given a privileged status in the last session, but was never called up. The chairman of the Committee on Rules went abroad and I understand he visited the English Parliament. Some people thought he might be going to call up the bill in the English Parliament. However, he did not at least call it up in the American Congress. Now we are in a short session of Congress, but we have not much to do, so this bill is sandwiched in but facetiously.

At the hearing before the Committee on Rules, as far as I know, no member of that committee was in favor of the bill, but the committee voted out a rule because they were serving notice on the Interstate and Foreign Commerce Committee, "You are not going to pass this buck to us."

Mr. PARKER. Mr. Chairman, will the gentleman yield?

Mr. O'CONNOR of New York. Yes.

Mr. PARKER. The gentleman made the statement that no member of the Committee on Interstate and Foreign Commerce who appeared before the committee stated his position on the bill.

Mr. O'CONNOR of New York. I said that no member was in favor of the bill except the gentleman from Connecticut [Mr. MERRITT]. We asked the gentleman from New York [Mr. PARKER] how he stood on the bill, and he refused to commit himself.

Mr. PARKER. Oh, I beg the gentleman's pardon. The record will show that I said that I was against the bill.

Mr. O'CONNOR of New York. Oh, no; you did not. The gentleman from Ohio [Mr. CHALMERS] stated something to this effect, "I don't know whether I am for it, but take it out and pass it or kill it." [Laughter.]

Mr. PARKER. Why, the gentleman from Ohio is not even on the committee. I challenge the statement that the gentleman makes.

Mr. O'CONNOR of New York. I have the hearings before the Committee on Rules here in which the chairman of the Committee on Interstate and Foreign Commerce refused to commit himself as to whether or not he was for or against the bill.

Mr. MAPES. Mr. Chairman, will the gentleman yield?

Mr. O'CONNOR of New York. And in which he said, "I am doing my duty. My committee instructed me to ask for a rule." [Laughter.]

Mr. MAPES. Mr. Chairman, will the gentleman yield?

Mr. O'CONNOR of New York. Yes.

Mr. MAPES. I think the gentleman's speech would be complete if he told who the members of the Interstate and Foreign Commerce Committee were who appeared before the Committee on Rules.

Mr. O'CONNOR of New York. The gentleman from New York [Mr. PARKER], the gentleman from Connecticut [Mr. MERRITT]—and I must say as to the gentleman from Connecticut that when we kept pressing him, saying, "Are you for the bill," he finally uttered just one word "yes"—and the gentleman from Ohio [Mr. CHALMERS] were there. Nobody found out how the gentleman from Ohio [Mr. CHALMERS] really stood.

Now, Mr. Chairman, I do not wish to intrude in other people's affairs.

Mr. PARKER. Mr. CHALMERS is not a member of that committee.

Mr. O'CONNOR of New York. Well, I did not recall whether he was a member of the committee. He appeared before the Rules Committee, and that is all I know about it.

Mr. PARKER. He did not appear on that bill.

Mr. PARKS. Will the gentleman yield?

Mr. O'CONNOR of New York. I yield.

Mr. PARKS. Does not the gentleman think, whether this bill does any good or any harm, the fact that it brought the chairman of the Committee on Interstate and Foreign Commerce [Mr. PARKER] and the distinguished gentleman from Birmingham, Ala. [Mr. HUDDLESTON] to one mind, at one time, in one bed, has done a great good? [Laughter and applause.]

Mr. O'CONNOR of New York. Mr. Chairman, I now ask unanimous consent that I may withdraw the motion I made, so that it may be presented by a member of the Committee on Interstate and Foreign Commerce.

The CHAIRMAN. Without objection, the gentleman has permission to withdraw the motion.

There was no objection.

Mr. HUDDLESTON. Mr. Chairman, I am eligible according to the standards set by the gentleman from New York [Mr. O'CONNOR], and I desire to renew the motion made by the gentleman from New York [Mr. O'CONNOR] to strike out the enacting clause.

The CHAIRMAN. The gentleman from Alabama [Mr. HUDDLESTON] moves that the committee do now rise and report the bill back to the House with the recommendation that the enacting clause be stricken out.

Mr. HUDDLESTON. May I say just a word? It is perfectly obvious that we are killing time. The bill in its present form is not satisfactory to the proponents. It is not satisfactory to the opponents. Why should we waste two or three hours reading the bill and going through this form of amendments? I had not intended to make this motion, but if it is the will of the committee that we dispose of the matter now, why not do it? I therefore make this motion, Mr. Chairman.

Mr. KELLY. Mr. Chairman, I am sure that the committee at least wants to give this legislation a fair chance and not deal with it in so unfair and unusual a manner. It will only take a short time to finish reading the bill and act in orderly manner.

Mr. HUDDLESTON. I thought I was doing what the gentleman wanted done.

Mr. KELLY. Oh, no. The gentleman is too agreeable. Let us in regular procedure report the bill with amendments back to the House and then let each Member use his best judgment as to the best course to pursue.

Mr. HUDDLESTON. Will the gentleman yield?

Mr. KELLY. I yield.

Mr. HUDDLESTON. While I do not want to kill the bill, except I would just like to murder it, will the gentleman from Pennsylvania [Mr. KELLY] agree that the bill be recommitted or that we may take a vote on recommitting the bill at this time? I want to save time. I do not want to stay here all night on this bill.

Mr. KELLY. The bill will not be recommitted with my vote. The gentleman knows that. It will not take a great

amount of time to read the final page of the bill. I insist that in 15 minutes, if we are fair in the matter, we can finish the concluding sections and take the bill back to the House, and then every Member can take any action he sees fit. This amendment which has just been passed in the committee will be voted upon, and let the House say whether or not it will accept or reject it.

The CHAIRMAN. The question is on the motion of the gentleman from Alabama [Mr. HUDDLESTON].

The question was taken; and on a division (demanded by Mr. KELLY) there were ayes 111 and noes 133.

So the motion was rejected.

The Clerk read as follows:

SEC. 2. Any such agreement in a contract in respect to interstate or foreign commerce in any such commodity shall be deemed to contain the implied condition—

(a) That during the life of such agreement all purchasers from the vendor for resale at retail in the same city or town where the vendee is to resell the commodity shall be granted equal terms as to purchase and resale prices;

(b) That such commodity may be resold without reference to such agreement—

(1) In closing out the owner's stock for the purpose of discontinuing dealing in such commodity or of disposing, toward the end of a season, of a surplus stock of goods specially adapted to that season;

(2) With notice to the public that such commodity is damaged or deteriorated in quality, if such is the case; or

(3) By a receiver, trustee, or other officer acting under the orders of any court or any assignee for the benefit of creditors.

Mr. BURTNESS. Mr. Chairman, I offer an amendment, which I have sent to the Clerk's desk.

The CHAIRMAN. The gentleman from North Dakota offers an amendment, which the Clerk will read.

The Clerk read as follows:

Amendment by Mr. BURTNESS: Page 4, following line 20, insert a new paragraph, as follows:

"(b) That the vendee may resell at a price below the stipulated resale price which yields not less than 20 per cent over the actual bona fide purchase price paid by him."

Mr. KELLY. Mr. Chairman, I make a point of order against the amendment on the ground that it is not germane to the section or the bill.

Mr. BURTNESS. Mr. Chairman, I desire to be heard on that point of order.

The CHAIRMAN. The Chair would prefer to hear further from the gentleman from Pennsylvania [Mr. KELLY].

Mr. KELLY. I take it that such limitation of profits on a bill which contains the principle of fair competition as fixing profits is not a germane proposition. Here is a specific requirement that a limitation of profits must be made on all of these resale contracts. In one case, in the ordinary course of doing business, a certain small profit is made. A larger profit must be made on another line——

Mr. BURTNESS. Will the gentleman yield? So that there is no misunderstanding, of course, my amendment does not pertain at all to any limitation of profits. That is not the language of the amendment at all. It simply creates one more exception of not being compelled to comply with the terms of the contract.

Mr. KELLY. But who shall be the judge as to the profit? Is there not a specific amount in the gentleman's amendment?

Mr. BURTNESS. I will be glad to read the amendment to the gentleman from Pennsylvania. Of course, it must be read in connection with section 2, the first sentence:

Any such agreement in a contract in respect to interstate or foreign commerce in any such commodity shall be deemed to contain the implied condition.

Now, in the bill as carried at this time, there are several implied conditions, a and b. In b there are four or five subdivisions—implied conditions. My amendment simply adds another implied condition in the following language, at the end of line 20, making an additional subdivision of section 2, to read as follows:

(b) That the vendee may resell.

Does not relate to the contract at all. The contract can be made at any stipulated price, but it provides:

That the vendee may sell at a price below the stipulated resale price which yields not less than 20 per cent over the actual bona fide purchase price paid by him.

It simply gives to the vendee the option to do whatever he desires.

Mr. KELLY. My attention was distracted at the moment the amendment was read, and I did not understand it. I withdraw the point of order against the amendment and will ask for recognition against the amendment later.

The CHAIRMAN. The gentleman from Pennsylvania [Mr. KELLY] withdraws the point of order. The gentleman from North Dakota is recognized on the amendment.

Mr. BURTNESS. Mr. Chairman and Members of the House, no one knows at this time whether the so-called McSwain amendment will finally be in the bill or not, so I feel we should continue to consider this bill seriously. Presumably the McSwain amendment, if it remains, simply ruins the bill in so far as the wishes of the proponents are concerned.

The bill has been before the country for a great many years. It is a question which deserves serious consideration and I think in the discussion of the point of order the purpose of my amendment has already been brought out.

It is proposed seriously. I am not the original author of this idea. The original author of this idea is the distinguished gentleman from California [Mr. LEA], one of the ablest and strongest members of the Committee on Interstate and Foreign Commerce; but unfortunately Mr. LEA is ill and can not be here to offer his own amendment. The amendment he proposed before the committee was, if I remember correctly, defeated by 1 vote. It was in different language from that which I am now proposing, and I have taken the liberty of changing the language of Mr. LEA's amendment, but adopting the same principle that was behind it; and I am offering it for the serious consideration of this committee.

The outstanding reason for legislation of this sort at all is what? To prevent predatory price-cutting. That is the claim that has been made all over this country by the gentleman from Pennsylvania and by others, namely, that irresponsible retailers, chain stores, and the like, fraudulently use one article as a leader, cutting the price of that leader down below the actual cost price or placing it at a very low figure above the cost price and using it as a leader to coax people into their stores and then selling them something else. That is the only evil aimed at which we have heard discussed on this floor or elsewhere.

So my point is that if that is the evil, let us reach it and let us reach that evil directly, but let us not provide here for a system of maintained prices to which competition will not apply in a natural economic way.

So you see my amendment simply does this: It permits competition between the retailers but it will not permit predatory price-cutting, either below the cost to the retailer or below what to many is a reasonable profit. In other words, to make it plain: If an article costs a retailer $1, if the stipulated resale price is $2 and the retailer says, "I do not need this profit of $1; I can do business on a 20 per cent profit," he is permitted under this amendment to place a price of $1.21 on it, but he can not sell it for $1.19 or 99 cents. He must charge at least 20 per cent above cost. This prevents undue price cutting.

If you adopt this amendment it seems to me it comes strictly within a very excellent statement made by Charles Wesley Dunn in his recent letter on this bill. Recall that Mr. Dunn was in favor of the original legislation some years ago, and he is still general counsel for an organization which, I think, must be interested in it, the Associated Grocery Manufacturers of America. I think he puts the economics underlying this matter perfectly in these words, and I want you to listen to them carefully:

It is clear that a resale price law, as a distribution law, must square with the facts and economics of distribution. It is clear that to do so such a law must distinguish between economic price reduction, which is a public benefit, and unfair price cutting, which is a trade evil, and run only against the latter. It is clear

that no law which empowers the prevention of economic resale price reduction and the suppression of economic resale price competition is sound in principle or public policy; that such a law is none the less uneconomic because it is said to be directed against unfair resale price competition.

The CHAIRMAN. The time of the gentleman from North Dakota has expired.

Mr. BURTNESS. Mr. Chairman, I ask unanimous consent to proceed for three additional minutes.

The CHAIRMAN. Without objection, it is so ordered.

There was no objection.

Mr. BURTNESS. In other words, this amendment, added to the bill as originally recommended by 12 of the 21 members of the committee of the House, would reach the evil of predatory price cutting. It would stop it if enough of the commodities of the country can come within the maintained price contract basis, but it will not prevent a merchant who is able to do business on a lower-cost scale from reducing prices for the benefit of his consumers. In other words, it will not compel an individual who has no charge accounts and who makes no deliveries to charge his consumers just as much as the beautiful palace on Fifth Avenue, which takes orders over the telephone, makes deliveries, and carries charge accounts for months and months. It is just as unreasonable to expect that a person who goes into a grocerteria shall pay the same amount for some of these branded articles which he carries away with him as he would have to pay in one of these high-class grocery stores run in a beautiful way, with high-priced salesmen and giving every service in the world—I say it is as unreasonable to expect one to pay the same price in these two cases as it would be to expect you to pay the same price for food in a cafeteria in Washington where you serve yourself or in a cheap restaurant as you would at the Mayflower Hotel with all its luxury and fine service.

I urge my amendment be adopted.

Mr. KELLY. Mr. Chairman, one moment ought to be enough to show every informed member of the committee that this amendment is an automatic limitation. Under it no manufacturer would make a contract with any retailer allowing more than 20 per cent profit. As a practical matter, this would indeed have an injurious effect upon orderly distribution. You can trust fair competition to regulate profits. This amendment should not be adopted.

The question was taken; and on a division (demanded by Mr. KELLY) there were—ayes 111, noes 102.

So the amendment was agreed to.

Mr. FORT. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The gentleman from New Jersey offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. FORT: On page 4, line 18, after the word "retail," insert "or for delivery after such resale."

Mr. FORT. Mr. Chairman, this amendment and another which I shall offer to the following line are intended to be not antagonistic to the purpose of the bill but in the nature of perfecting amendments.

As the bill now reads it would be possible for a mail-order house to make sales at its point of doing business for delivery in a city where merchants were limited in their price regulations by the provisions of the bill and contracts made thereunder, and such a mail-order house could therefore undersell the local merchant. I have therefore suggested an amendment to this line which makes the price-regulating contracts necessarily operative as to all sales for delivery within the territory affected by any contracts limiting the price. Without this provision the present competition of the local merchant from the chain store would simply be translated into a mail-order competition. It seems to me that the proponents of the bill should accept this amendment.

Mr. KELLY. As I understand, it carries the territory out to the delivery area?

Mr. FORT. To the delivery area; yes.

My next amendment provides that the price must be uniform throughout competitive territory. As the bill is drawn, different prices might prevail in adjoining cities which constituted one territory from a merchandising standpoint.

The third amendment I shall offer provides an additional case in which a merchant may disregard the fixed price; namely, when by virtue of excessive inventories or lack of funds or credit the proper conduct of his business demands a speedy sale of his stock. As drawn, the bill permits a receiver to sell at lower prices. My amendment will permit merchants in many cases to avoid bankruptcy by realizing cash and reducing inventory.

The amendment was agreed to.

Mr. FORT. Mr. Chairman, I offer another amendment.

The CHAIRMAN. The gentleman from New Jersey offers an amendment which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. FORT: Page 4, line 19, after the word "commodity," insert "or in any city or town, merchants located in which are in fair and open competition with such vendee."

Mr. KELLY. Mr. Chairman, I understand this amendment simply covers the general trade territory served by a retailer and is in line with the other provision in the bill. I do not know that I correctly heard the amendment as read, so I will ask unanimous consent that it be read again.

The amendment was again reported.

Mr. KELLY. That seems to be in line with the purpose of the provision which was put in by the committee as subsection (a). My original purpose, of course, was to cover the entire trade area. I suggest that the amendment should be accepted.

The amendment was agreed to.

Mr. FORT. Mr. Chairman, I have another amendment.

Mr. PARKER. Mr. Chairman, I ask unanimous consent that all debate on this section and all amendments thereto be now closed.

Mr. HULL of Wisconsin. Mr. Chairman, I object.

Mr. PARKER. Mr. Chairman, I move that all debate on this section and all amendments thereto do now close.

The motion was agreed to.

The CHAIRMAN. The gentleman from New Jersey offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. FORT: Page 5, line 7, after the word "creditors," insert a new paragraph, as follows:

"(4) When it is necessary to the conduct of the business of the owner either because of excessive inventory or because of insufficient funds or credit."

The amendment was agreed to.

Mr. COX. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The gentleman from Georgia offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. COX: On page 5, line 4, strike out "or."

On page 5, line 7, strike out the period and insert a semicolon and the word "or" and the following:

"(4) If after the vendee gives notice to the vendor containing a statement of the quantity and condition of the commodity and the cost price thereof, less transportation charges paid by the vendee, if any thereon, the vendor fails within 10 days to repurchase said commodity at the cost price, less such transportation charges, if any, and less a reasonable adjustment for deterioration in quality, if any. For the purposes of this section notice served by registered-letter mail to the vendor shall be sufficient, and such period of 10 days shall run from the delivery of the letter to the vendor."

The CHAIRMAN. The question is on the amendment offered by the gentleman from Georgia.

The question was taken, and the amendment was agreed to.

Mr. HULL of Wisconsin. Mr. Chairman, I offer the following amendment:

The Clerk read as follows:

Page 4, lines 18 and 19, after the word "retailer," in line 18, strike out the words "in the same city" and the words "or the town where the vendee is to resell the commodity," in line 19.

The CHAIRMAN. The question is on the amendment.

The question was taken, and the amendment was agreed to.

Mr. O'CONNOR of Oklahoma. Mr. Chairman, I offer the following amendment:

The Clerk read as follows:

After the Cox amendment, just adopted, insert the following: "*Provided*, That nothing herein shall apply to apples in periods of depression if the same are wormy."

[Laughter.]

The CHAIRMAN. The question is on the amendment offered by the gentleman from Oklahoma.

The question was taken, and the amendment was rejected.

The Clerk read as follows:

SEC. 3. Nothing contained in this act shall be construed as legalizing any contract or agreement between producers or between wholesalers or between retailers as to sale or resale prices.

Mr. MURPHY. Mr. Chairman, I offer the following amendment:

On page 5, after line 11, insert "Nothing contained herein shall prevent the return of commodities by the retailer to the wholesaler at the invoice price or to prevent the retailer from selling such commodities at less than the contract price when the retailer is in such a financial condition as to require immediate disposition of such commodities."

Mr. MURPHY. Mr. Chairman and ladies and gentlemen of the committee, I have listened intently all the afternoon to hear some gentleman or lady on this floor say something in the interest of the small retailer. Each and every one who have spoken against the chain-store system have alleged that they are working for the benefit of the small-town storekeeper. So far you have failed to do anything in the bill to get the small-town storekeeper any consideration whatever.

Mr. O'CONNOR of Oklahoma. I offered an amendment in the interest of the unemployed man selling apples. [Laughter.]

Mr. MURPHY. I am speaking in a serious vein.

Mr. COX. Does not the gentleman recognize that his amendment simply reenacts the amendment that I offered?

Mr. MURPHY. Yes; I was interested in the gentleman's amendment and voted for it. But I want to vote for a bill that gives some help to the small-town retailer. If this bill goes through as originally presented to this committee, a retailer finding his shelves filled with trade-mark merchandise, if a depression comes on, he is hamstrung and can not sell the merchandise to pay his bills because he is tied up.

I have been in business for years in a small town. I have nursed the business when it was sick; I have walked the floor with it at nights, as you would a child; and I sold the merchandise for less than I bought it for, in order to get the money to pay my bills and keep my credit up. [Applause.] If you are in earnest and want to do something for the small-town retailer, then you should give him a chance to stand up against this new kind of competition, so that he may say to the man who sells him these goods and who tells him that he must sell them at a certain price, that the same man must take those goods off his hands, should the time come when he can not pay for them, to the end that he may live and breathe his business life to its natural end.

The CHAIRMAN. The time of the gentleman from Ohio has expired.

Mr. PARKER. Mr. Chairman, I move that all debate on this section and all amendments thereto be closed in two minutes.

The motion was agreed to.

Mr. KELLY. Mr. Chairman, let us consider this amendment seriously. The gentleman says he desires to have this contract not apply in cases where the little retailer is in distressed financial circumstances and needs immediate cash. That purpose has already been accomplished by the amendment, which I supported, offered by the gentleman from Georgia [Mr. COX], which provided that the retailer may request the vendor to take back the goods he bought at the price he paid; and if he refuses, then that the retailer could sell them at a different price than that stipulated. I am for that proposition, and it covers the situation pictured by the gentleman from Wisconsin. Under this condition it is unnecessary to adopt the amendment offered by the gentleman from Ohio, and I hope he will not press it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio.

Mr. MURPHY. Mr. Chairman, in view of the statement made by the gentleman from Pennsylvania, I ask unanimous consent to withdraw the amendment.

The CHAIRMAN. Is there objection?

Mr. SNOW. I object.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio.

The amendment was rejected.

Mr. COX. Mr. Chairman, I offer the following amendment, which I send to the desk and ask to have read.

The Clerk read as follows:

Amendment offered by Mr. COX: Page 5, after line 11, insert the following:

"SEC. 4. No vendor shall be entitled to the exemptions provided in section 1 with respect to any contract made by such vendor if such vendor fails, within 15 days after making any contract to which section 1 applies, to file with the Federal Trade Commission under oath (1) a description of every commodity sold under such contract, and (2) a copy of such contract containing the price at which the vendor sells to the vendee and the price at which the commodity is to be resold by the vendee. The Federal Trade Commission shall have power, on complaint of any vendee, consumer, or interested party, or upon its own motion, to investigate any such contract, and if, after hearing after reasonable notice and opportunity to be heard, the commission finds that the price charged in such contract by the vendor or to be charged by the vendee is unreasonable, the commission shall have authority to fix a reasonable price for the sale or resale of such commodity under such contract. For the purposes of such investigation the commission shall have power to require of any vendor or vendee such information in the possession of the vendor or vendee as may be necessary to determine a reasonable price. The exemptions provided in section 1 shall not apply to any vendor or vendee who (1) fails to make available to the commission such information, or (2) charges a higher price than that so fixed by the commission"——

Mr. KELLY (interrupting the reading). Mr. Chairman, I make the point of order on the amendment upon the ground that it is not germane.

The CHAIRMAN. A sufficient portion of the amendment has been read to show that it is not in order under the previous ruling of the Chair. The point of order is sustained.

Mr. McSWAIN. Mr. Chairman, I offer the following amendment, which I send to the desk.

The Clerk read as follows:

Amendment offered by Mr. MCSWAIN: Page 5, line 11, after the word "prices," strike out the period, insert a comma, and add the following words: "But all such contracts or agreements, express or implied, shall be deemed unlawful and in restraint of trade, and such contracts or agreements may be established upon proof of facts and circumstances tending to show any agreement, understanding, or arrangement, even if same be not formally written and signed."

The CHAIRMAN. The question is on the amendment offered by the gentleman from South Carolina.

The amendment was rejected.

The Clerk read as follows:

SEC. 4. As used in this act—

(1) The term "producer" means grower, packer, maker, manufacturer, or publisher.

(2) The term "commodity" means any subject of commerce.

Mr. KELLY. Mr. Chairman, I move to strike out the last word. Mr. Chairman, only one amendment has been adopted this afternoon, in this field day which we have had, which seriously affects this measure in injurious manner. That is the amendment offered by the gentleman from South Carolina [Mr. MCSWAIN]. The other amendments that have been agreed to have been practically all in former drafts of measures of this character. I hope there can be a separate vote on the McSwain amendment when we return to the House, and that it will be stricken from the bill.

Mr. RAYBURN. Mr. Chairman, I move to strike out the last word.

Mr. MAPES. Mr. Chairman, I rise to a point of order. What is the parliamentary situation? As I understand it, debate has been closed.

The CHAIRMAN. Another section has been read and the gentleman from Texas has moved to strike out the last word.

Mr. RAYBURN. Mr. Chairman, I moved to strike out the last word.

Mr. MAPES. Mr. Chairman, will the gentleman yield?

Mr. RAYBURN. Yes.

Mr. MAPES. I say to the gentleman from Texas that I was not following the procedure closely. The chairman of the committee had told me that all debate upon the bill had closed, and I was anxious to make a statement of two or three minutes in order to explain the parliamentary situation. The only reason I interrupted was in order to get an opportunity to make a statement. If the gentleman was to proceed out of order, I felt that some friend of the legislation should have the same privilege. The gentleman from Texas knows that I would not be personal as far as he is concerned.

Mr. RAYBURN. Mr. Chairman, this measure that has been reported to this House by the Committee on Interstate and Foreign Commerce, after it had slept there for 18 years to my knowledge, was reported out last spring. The measure in its present form has never been subjected to a hearing in that committee. No hearing has been held in that committee for nearly five years now upon this measure. This measure in its present form, or in the form reported from the committee, and especially in the form that it finds itself in now since amendments have been adopted, is a farce and a fraud. It has brought about this farcical scene in the House of Representatives to-day.

No one, in my opinion, can tell now, in the shape this bill is, what its effect will be. I do not believe that any member of the committee, not even the proponent of the bill, the gentleman from Pennsylvania [Mr. KELLY], will contend that this is the measure that the retail druggists, the retail grocery men, the retail hardware men, or any other retail association throughout the country indorsed, and upon which they asked the Members of Congress to commit themselves.

This measure, as it will be presented to the House when this committee rises, has never been considered by a committee and has never had the indorsement of any of these organizations. The sensible, the sane thing to do with this legislation, if those who claim to be the proponents of it want real legislation, is to recommit the bill to the Committee on Interstate and Foreign Commerce [applause], where we can have, in the light of present circumstances, careful consideration and hearings upon the bill as presented here and the bills that have been indorsed by these organizations in the past.

Therefore it is my purpose, it matters not what disposition is made of the amendments that have been offered to this bill to-day, to move at the proper time to recommit this bill to the Committee on Interstate and Foreign Commerce for that sane and sound consideration that it should have. [Applause.]

Mr. MAPES. Mr. Chairman, I rise in opposition to the pro forma amendment.

Mr. Chairman and members of the committee, the gentleman from Michigan, to whom the gentleman from Texas [Mr. RAYBURN] has referred, in his interruption of the gentleman from Texas [Mr. RAYBURN] was only trying to protect the rights of this legislation. The gentleman from Michigan understood that all debate on the bill had been closed, and, desiring to make a statement, he thought that if the gentleman from Texas [Mr. RAYBURN] was going to have permission, out of order, to make a speech, it was no more than fair to the legislation that somebody who was friendly to it should have the right to explain the parliamentary situation. The members of the committee have not failed to note that during the consideration of the bill the time on both sides of the aisle had been under control by those unfriendly to it.

Mr. Chairman and ladies and gentlemen of the committee, this afternoon an amendment reported by the Committee on Interstate and Foreign Commerce to the original bill has been considered in the Committee of the Whole in lieu of the bill. When the committee rises there will be one amendment only to vote on, that is the committee amendment as it has been amended here this afternoon. So far as I am individually concerned, I think it would be desirable to vote down the committee amendment in view of the amendments which have been added to it here this afternoon, and adopt the original bill as introduced by the gentleman from Pennsylvania [Mr. KELLY]. In other words, by voting down the amendment when the committee rises we will revert to the original bill. Those are the only alternatives—take the amendment as it has been amended this afternoon, or take the original bill. After that is done the vote will be upon the motion of the gentleman from Texas [Mr. RAYBURN] to recommit, if he carries out his intention as announced to make such a motion.

It should be clearly understood, however, that when the committee rises the only question that will be before the House is, Will the committee amendment as it has been amended here to-day be accepted, or will the original bill be substituted in its place?

Mr. KELLY. Will the gentleman yield?

Mr. MAPES. I yield.

Mr. KELLY. In other words, if we vote down the one amendment which has been passed we return to the original bill, and that will be before the House?

Mr. MAPES. Exactly.

Mr. BURTNESS. Will the gentleman yield?

Mr. MAPES. I yield.

Mr. BURTNESS. Is the original bill the bill which the Committee on Interstate and Foreign Commerce refused to recommend to the House?

Mr. MAPES. A majority of the committee thought the committee amendment would be more conservative than the original bill. A majority of the committee favored the committee amendment as it was before it was amended this afternoon. But, for one, I do not favor it now in preference to the original bill.

Mr. BURTNESS. Certainly there was no majority vote of the committee on the bill as originally introduced.

Mr. MAPES. Of course not.

Mr. PARKER. Mr. Chairman, I move to strike out the last two words.

I have not taken a great deal of time on this bill, but we are in a very peculiar situation. As the gentleman from Michigan [Mr. MAPES] has explained, here is a bill which, if you do not accept the amendments that have been voted on, you have to accept a bill which has never had the approval of any committee at any time.

This question of price fixing—let us call it what it is—has been before the Congress for 20 years. The gentleman from Texas [Mr. RAYBURN] and myself have been members of this committee for almost 20 years. This bill has been before our committee all of that time. We have been accused of not having hearings on this particular bill. That is perfectly true, but if you will go back over the records of the committee you will find we have spent days and days in hearings on the principle involved in this bill. I think the gentleman from Alabama was correct in stating there were 4 members out of 21 who did not hear those hearings, but there were 17 members who did hear the hearings, who had been there for days and days listening to long and exhaustive statements. Now, it seems to me the only sensible thing to do at this time is to vote down the amendments, and when the proper time comes vote in favor of the motion that will be made by the gentleman from Texas [Mr. RAYBURN] to send this bill back to the Committee on Interstate and Foreign Commerce. [Applause.]

Mr. KELLY. Will the gentleman yield?

Mr. PARKER. I yield.

Mr. KELLY. Will the gentleman not be fair enough to say that this original bill was prepared largely by a subcommittee of the gentleman's committee—Mr. MERRITT, Mr. MAPES, Mr. NELSON, and Mr. LEA?

Mr. PARKER. Yes.

Mr. KELLY. And that is practically the bill which will be before us when we vote down this amendment.

Mr. CRISP. Will the gentleman yield?

Mr. PARKER. Yes.

Mr. CRISP. May I say this? I do not believe, gentlemen, that when you get in the House you will have an opportunity to vote separately on each amendment which has been adopted.

Mr. PARKER. Of course not.

Mr. CRISP. We will have to vote upon the bill as reported out of this committee.

The CHAIRMAN. The question is on the committee amendment as amended.

The committee amendment as amended was agreed to.

Under the rule the committee automatically rose; and the Speaker having resumed the chair, Mr. LEHLBACH, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee, having had under consideration the bill H. R. 11, reported the same back to the House with an amendment adopted by the committee.

The SPEAKER. Under the rule the previous question is ordered on the bill and the amendment to final passage.

Mr. KELLY. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. KELLY. The Committee of the Whole House on the state of the Union has adopted one amendment which includes a number of amendments adopted by the committee. If that one amendment is voted down, then the question recurs on the original bill.

The SPEAKER. It does. The question is on agreeing to the amendment.

The question was taken; and on a division (demanded by Mr. RAYBURN) there were—ayes 205, noes 145.

Mr. KELLY. Mr. Speaker, I ask for the yeas and nays.

The yeas and nays were refused.

So the amendment was agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

Mr. RAYBURN. Mr. Speaker, I move to recommit the bill to the Committee on Interstate and Foreign Commerce.

Mr. MAPES. Mr. Speaker, I move the previous question on the motion to recommit.

The previous question was ordered.

Mr. MAPES. Mr. Speaker, I ask for the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 146, nays 211, answer "present" 1, not voting 73, as follows:

[Roll No. 22]

YEAS—146

Abernethy	Dickstein	Hill, Ala.	Perkins
Ackerman	Dorsey	Huddleston	Pratt, Ruth
Aldrich	Doughton	Hull, Tenn.	Quin
Allgood	Douglas, Ariz.	Hull, Wis.	Ragon
Almon	Doxey	James, N. C.	Ramseyer
Andrew	Drewry	Jeffers	Ramspeck
Aswell	Driver	Johnson, Okla.	Rankin
Ayres	Eaton, Colo.	Jonas, N. C.	Ransley
Bacon	Eaton, N. J.	Kading	Rayburn
Bankhead	Edwards	Kemp	Reece
Beedy	Eslick	Kendall, Ky.	Rogers
Bland	Fisher	Kvale	Romjue
Bolton	Fitzgerald	Lanham	Rutherford
Box	Fort	Larsen	Schneider
Brand, Ga.	Foss	Loofbourow	Seger
Brand, Ohio	Frear	Luce	Seiberling
Brigham	Freeman	McDuffie	Shaffer, Va.
Britten	French	McKeown	Short, Mo.
Browning	Fuller	McMillan	Sinclair
Burtness	Fulmer	McReynolds	Snell
Busby	Gifford	Mooney	Snow
Cannon	Glover	Moore, Ky.	Somers, N. Y.
Celler	Goldsborough	Moore, Va.	Spearing
Chindblom	Green	Nelson, Me.	Sproul, Kans.
Christgau	Gregory	Nelson, Wis.	Steagall
Condon	Griffin	O'Connor, N. Y.	Stobbs
Cooper, Tenn.	Hale	Oldfield	Stone
Cox	Hall, Miss.	Oliver, Ala.	Taber
Crisp	Hall, N. Dak.	Palmisano	Thatcher
Crosser	Hancock, N. Y.	Parker	Thurston
Davenport	Hancock, N. C.	Parks	Treadway
Davis	Hare	Parsons	Tucker
De Priest	Hastings	Patterson	Underwood
DeRouen	Hess	Peavey	Vinson, Ga.
Wainwright	White	Wingo	Yon
Warren	Wigglesworth	Wolverton, N. J.	
Watson	Wilson	Wright	

NAYS—211

Adkins	Doutrich	Kennedy	Pritchard
Allen	Dowell	Ketcham	Purnell
Andresen	Dunbar	Kiefner	Rainey, Henry T.
Arentz	Dyer	Kinzer	Ramey, Frank M.
Arnold	Elliott	Knutson	Reed, N. Y.
Auf der Heide	Ellis	Kopp	Reilly
Bachmann	Englebright	Korell	Robinson
Beers	Erk	Kurtz	Sanders, Tex.
Black	Estep	LaGuardia	Sandlin
Blackburn	Evans, Mont.	Lambertson	Schafer, Wis.
Blanton	Finley	Lankford, Ga.	Sears
Bloom	Fish	Lankford, Va.	Selvig
Bohn	Free	Leavitt	Shott, W. Va.
Bowman	Gambrill	Leech	Shreve
Briggs	Garber, Okla.	Lehlbach	Simmons
Brumm	Garber, Va.	Lindsay	Simms
Buchanan	Garner	Linthicum	Sloan
Burdick	Gasque	Lozier	Smith, W. Va.
Butler	Gavagan	Ludlow	Sparks
Byrns	Gibson	McClintock, Ohio	Speaks
Cable	Goodwin	McCormack, Mass.	Stafford
Campbell, Iowa	Goss	McCormick, Ill.	Stalker
Campbell, Pa.	Granfield	McFadden	Strong, Kans.
Canfield	Greenwood	McLaughlin	Strong, Pa.
Carter, Calif.	Guyer	McLeod	Sullivan, Pa.
Carter, Wyo.	Hadley	McSwain	Summers, Wash.
Cartwright	Hall, Ill.	Maas	Sumners, Tex.
Chalmers	Hall, Ind.	Manlove	Swanson
Chase	Halsey	Mapes	Swick
Christopherson	Hartley	Martin	Swing
Clague	Hawley	Mead	Taylor, Colo.
Clark, Md.	Hickey	Menges	Taylor, Tenn.
Clarke, N. Y.	Hill, Wash.	Merritt	Temple
Cochran, Mo.	Hoch	Michener	Tilson
Cochran, Pa.	Hogg, W. Va.	Miller	Timberlake
Cole	Hogg, Ind.	Milligan	Vestal
Collier	Holaday	Montague	Vincent, Mich.
Colton	Hooper	Montet	Walker
Connery	Hope	Moore, Ohio	Wason
Connolly	Hopkins	Morehead	Watres
Cooke	Howard	Morgan	Welch, Calif.
Cooper, Ohio	Hudson	Mouser	Welsh, Pa.
Coyle	Hull, Morton D.	Murphy	Whitehead
Craddock	Hull, William E.	Nelson, Mo.	Whitley
Crail	Irwin	Newhall	Whittington
Cramton	Johnson, Ind.	Nolan	Williamson
Cross	Johnson, Nebr.	Norton	Wolfenden
Crowther	Johnson, Tex.	O'Connor, La.	Wolverton, W. Va.
Culkin	Johnston, Mo.	O'Connor, Okla.	Wood
Dallinger	Jones, Tex.	Palmer	Woodrum
Darrow	Kahn	Patman	Wurzbach
Denison	Kelly	Pittenger	Wyant
Dominick	Kendall, Pa.	Prall	

ANSWERED "PRESENT"—1

Bacharach

NOT VOTING—73

Baird	Doyle	Johnson, Wash.	Sabath
Barbour	Drane	Kearns	Sanders, N. Y.
Beck	Esterly	Kerr	Sirovich
Bell	Evans, Calif.	Kunz	Smith, Idaho
Boylan	Fenn	Langley	Sproul, Ill.
Browne	Fitzpatrick	Lea	Stevenson
Brunner	Garrett	Letts	Sullivan, N. Y.
Buckbee	Golder	McClintic, Okla.	Tarver
Carley	Graham	Magrady	Thompson
Chiperfield	Hardy	Mansfield	Tinkham
Clancy	Haugen	Michaelson	Turpin
Clark, N. C.	Hoffman	Niedringhaus	Underhill
Collins	Houston, Del.	Oliver, N. Y.	Williams
Cooper, Wis.	Hudspeth	Owen	Woodruff
Corning	Igoe	Pou	Yates
Cullen	James, Mich.	Pratt, Harcourt J.	Zihlman
Dempsey	Jenkins	Reid, Ill.	
Dickinson	Johnson, Ill.	Rich	
Douglass, Mass.	Johnson, S. Dak.	Rowbottom	

So the motion to recommit was rejected.

The Clerk announced the following pairs:

On this vote:

Mr. Boylan (for) with Mr. Jenkins (against).
Mr. Clark of North Carolina (for) with Mr. Cullen (against).
Mr. Kerr (for) with Mr. Niedringhaus (against).
Mr. Brunner (for) with Mr. Hardy (against).
Mr. Igoe (for) with Mr. Corning (against).
Mr. Bacharach (for) with Mr. Graham (against).

Until further notice:

Mr. Sanders of New York with Mr. Bell.
Mr. Turpin with Mr. Douglass of Massachusetts.
Mr. Dickinson with Mr. Garrett.
Mr. Letts with Mr. Mansfield.
Mr. Barber with Mr. Pou.
Mr. Rich with Mr. Carley.
Mr. Beck with Mr. Drane.
Mr. Harcourt J. Pratt with Mr. Collins.
Mr. Sproul of Illinois with Mr. Tarver.
Mr. Buckbee with Mr. Stevenson.
Mr. Chiperfield with Mrs. Owen.
Mr. Underhill with Mr. Lea.

Mr. Reid of Illinois with Mr. Oliver of New York.
Mr. Magrady with Mr. Williams.
Mr. Johnson of South Dakota with Mr. Sullivan of New York.
Mr. Golder with Mr. McClintic of Oklahoma.
Mr. Evans of California with Mr. Sabath.
Mr. Clancy with Mr. Kunz.
Mr. Esterly with Mr. Hudspeth.
Mr. Johnson of Washington with Mr. Fitzpatrick.
Mr. James of Michigan with Mr. Doyle.
Mr. Smith of Idaho with Mr. Sirovich.

Mr. BACHARACH. Mr. Speaker, I voted in the affirmative. I have a pair with the gentleman from Pennsylvania, Mr. GRAHAM. I understand that if he were present he would vote "no." I therefore withdraw my vote of "aye" and answer "present."

The result of the vote was announced as above recorded.

The SPEAKER. The question is on the passage of the bill.

The question was taken, and the bill was passed.

On motion of Mr. MAPES, a motion to reconsider the vote by which the bill was passed was laid on the table.

THE CAPPER-KELLY FAIR TRADE BILL

Mr. MAPES. Mr. Speaker, I ask unanimous consent that all Members of the House may have five legislative days within which to extend their own remarks on the bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. TREADWAY. Mr. Speaker, this measure has been so long before Congress that there is no need of any argument relative to its merits. I have endeavored to secure from various people and organizations interested in my district the local viewpoint upon the bill. For a long time retail druggists have favored the measure and have urged its enactment. I have acknowledged receipt of one petition signed by the retail druggists of Berkshire County and numerous individual letters from druggests elsewhere in my district.

In order to be certain of the local sentiment in western Massachusetts I sent copies of the bill to the chambers of commerce in the four cities in the first district. The secretary of one chamber replied that he was unable to find any evidence of interest in the bill one way or the other. In the two largest cities of the district the subject was duly considered at regular meetings and strong protests made against the passage of the bill, of which I was officially advised by the secretaries of those bodies.

As nearly as I have been able to obtain a cross section of public opinion, it seems to me that a majority of the persons and organizations expressing their views in my district were opposed to legislation looking to any control of prices of commodities. While strong arguments have been advanced against chain stores in connection with the measure, it is also very apparent that the average man or woman resents any effort to interfere with their privilege of shopping to the best advantage. In other words, if the housewife considers it possible to secure a more advantageous price at one store than at another on some article to be used in her home, she and her husband object to being told that the manufacturer of the article can control the price at which she can buy it, regardless of whatever store they may patronize.

In addition to what appears to be a majority view in my district and the simple argument I have just cited in opposition to the bill, it has seemed to me after careful consideration that in representing the views of the people of western Massachusetts my duty was clear to vote against the bill on its merits, particularly in view of the many amendments which were adopted in the course of its consideration in the House. These amendments were of a nature not favorable to the bill as originally drawn or as advocated by its proponents. It was apparent during the debate that these amendments were hostile to the real merits of the measure and that they were offered with the expectation of defeating its purposes. It is my opinion that the bill will not become law, and that the underlying principle of the measure will in all probability not be revived in the form of future legislation.

I have already stated that it would appear to me that the majority of the people in the district I have the honor to represent are opposed to the measure. In addition to their views, so many organizations with members in my district, such as the American Federation of Labor, the National Grange, the General Federation of Women's Clubs, and many other trade organizations, are on record in opposition to the bill that I feel, both from the local standpoint of my own section and from general opinions expressed by organizations, that the best interests of the people as a whole will be served by the defeat of the bill.

Mr. LANKFORD of Georgia. Mr. Speaker, the gentleman from Pennsylvania [Mr. KELLY] on the 17th of this month, while discussing the so-called Capper-Kelly fair trade bill, stated that he had in his possession a letter sent him by L. J. Taber, master of the National Grange, and quoted from the letter as follows:

> It has been brought to my attention that in various parts of the country chain stores have in many instances sold potatoes, milk, watermelons, and other farm products below actual cost in order to attract trade. The practice has been to make "leaders" of these and similar commodities and to depend on the sale of other merchandise for profits.
>
> The effect in such cases has been to greatly depress the price of farm products in the sections where these practices prevailed.
>
> The National Grange is in favor of protecting the interests of the agricultural producer from undue depression in price, while safeguarding the interests of the consumer by the adoption of such measures as will insure fair and honest competition.

Mr. Speaker, this is most interesting information from a very reliable source and should receive prompt and careful consideration from the farmers and their friends.

If the friends of the Capper-Kelly bill are able to perfect it so as to make it truly helpful to the small independent merchant and other small independent business man it is evident that it would also protect the growers of canteloupes, watermelons, and many other vegetables and fruits if properly packaged and marked so as to come under the provisions of the law. Among the other farm products that could be helped by proper legislation, preventing predatory price cutting, I happen, just now, to have in mind the Sowega watermelon of south Georgia, the Wenatchee apple of the State of Washington, the splendid canteloupe from Imperial Valley of California, and the most splendid canteloupes, peaches, other fruits and vegetables of Georgia. The beauty of the situation is that the seasons in the various sections are such as not to cause great conflict. Then again, it must be remembered that any just law that will protect one group of orchardmen or farmers will, in the end, protect the farmers of the entire Nation.

The fruits and vegetables of south Georgia and Florida do not seriously conflict with those of other sections, and what is to the best interest of one group is for the welfare of all.

I feel that by helping the farmer and the small business man to exist and make a living we are doing no violence to the consumers of the country. After all, the great fight today is that of the common people against organized, highly capitalized wealth. Every useless fight made by the common people among themselves enables the great combines of wealth to get a greater stranglehold on the great producing and consuming mass of common people. I sincerely hope that out of this agitation and demand for legislation will come a law that will save the small dealer and all the great mass of people who have heretofore patronized him.

Mr. McSWAIN. Mr. Speaker, I desire to say a few words in a general way about the Capper-Kelly resale price-fixing bill, now under consideration by Congress. I have introduced two amendments, one of which was adopted by an overwhelming majority, because it is entirely in keeping with the declared purpose and intention of the sponsors of the bill. This amendment provides that the price-fixing power of the manufacturer shall not apply to such necessities of life as meat and meat products, flour and flour products, agricultural implements, tools of trade, canned fruits and vegetables, clothes, shoes, and hats. The report of the com-

mittee solemnly states that its provisions do not apply to the necessities of life. The many friends of this bill that have spoken to me about it have all insisted that it did not increase the cost of living, because it did not apply to the things that people must eat and wear.

Therefore it is no wonder that this amendment proposed by me should have won by an overwhelming majority. The next amendment which I have offered relates to that part of the bill which undertakes to insure competition between manufacturers by providing that the provisions of this bill shall not be held to legalize any contracts or agreements between producers or manufacturers on the one side and wholesalers and retailers on the other. Now, my amendment seeks to perfect that provision of the bill by adding these words:

But all such contracts or agreements, express or implied, shall be deemed unlawful and in restraint of trade, and such contracts or agreements may be established upon proof of facts and circumstances tending to show any agreement, understanding, or arrangement, even if same be not formally written or signed.

Mr. Speaker, the purpose of this second amendment which I offered, which the House rejected, is manifestly to facilitate the proof in court of arrangements and understandings between producers and manufacturers. We all know something about the so-called "gentleman's agreements." It will be very difficult for a member of the public or for any dealer to ascertain and be able to prove in court that there was a formal written contract between manufacturers as to the fixing of prices. Such contracts will naturally be made in the most secret and confidential way. As a matter of fact, such contracts will usually not be in writing but will consist of an agreement and understanding arrived at after a conference.

But the effect upon the public in fixing the prices, and thus increasing the cost of living, will be the same. Therefore my amendment sought to protect the public by making it possible to prove such agreements by circumstantial evidence and by permitting a jury in a Federal court, where suits to enforce the provisions of the Sherman antitrust law might be filed. I sincerely hope that the Senate will give very serious consideration to this amendment of mine which the House failed to adopt. These two amendments will add very materially to the protection of the public generally, if the bill ever becomes law, and at the same time will not hinder nor impede the honest and sincere operation of the provisions of the bill among honest and right-minded manufacturers and merchants.

"KONSIDER KAPPER-KELLY BILL"

Mr. Speaker, I think I might classify the Members of the House into three different groups as to this resale and price-fixing bill. The first group might be called the "Kill Kapper-Kelly." The second group might be called the "Kan Kapper-Kelly." The third group might be called the "Kure Kapper-Kelly."

The first group wanted to strike out the enacting words immediately; therefore, they wanted to "kill" the bill. The next group merely wanted to recommit the bill to the Committee on Interstate and Foreign Commerce and thus "can" it. The third group tried to "cure" the bill by offering perfecting amendments so that it might be acceptable to its disinterested and unselfish proponents, and at the same time not prove dangerous to the general public by increasing the cost of the necessities of life. To this latter group I belong. It will be observed that the amendments which I have offered are in good faith for the purpose of perfecting and rendering more acceptable the provisions of the bill. Therefore, I voted against the motion to recommit the bill, but voted in effect to send the bill to the Senate where the same can be carefully considered in the light of the arguments made in the House and in the light of such additional information as individuals and groups may furnish. After the Senate shall have thrashed the same out, it should go to conference, and out of the conference it may be possible to bring a bill which will accomplish the real purposes desired, and at the same time not throttle legitimate competition, nor discourage the initiative of American merchants, nor increase the already burdensome cost of living.

Mr. MERRITT. Mr. Speaker, under the general leave to extend remarks on the Capper-Kelly bill I quote a letter received from Mr. Roscoe Pound, the dean of the Harvard Law School and one of the most distinguished lawyers in the United States. It will be observed that he takes the same view of the English common law which was taken in the Boston Store case by our colleague, Mr. J. M. BECK, namely, that a sale with a condition attached was legal under the English common law and under the common law of this country, and not against public policy. I think this letter should have great influence with those who have had doubt on this subject and should tend to convince them that the underlying principle of the legislation proposed in the so-called Capper-Kelly bill is a sound one.

The letter is as follows:

JANUARY 30, 1931.

Hon. SCHUYLER MERRITT,
House of Representatives, Washington, D. C.

DEAR MR. MERRITT: Your letter of January 19, addressed to me at Cambridge, Mass., has been forwarded. As I told you when we were talking about the matter, I feel very clear that the subject of contracts with respect to price on resale is one upon which there ought to be legislation. The question of enforcement of such contracts first came before an important tribunal in a case in England before Sir George Jessel. He declared that the public was in nothing more thoroughly interested than in facilitating and giving effect to contracts. Hence he conceived that such contracts should be enforceable. Some of the State courts in this country started in the same direction. But the current was set in a different direction by a decision of Judge Lurton in the circuit court of appeals before he went upon the Supreme Bench of the United States. Judge Lurton did not come from a commercial jurisdiction, and I venture to think that his ideas on such a subject were those of the past rather than of the conditions of industry to-day. However that may be, his views definitely prevailed in judicial decisions. If it were to come before the courts for the first time to-day, I suspect it would be looked upon differently. At any rate, it ought to be put upon an assured and modern basis by legislation.

Yours very truly,

ROSCOE POUND.

INTERIOR DEPARTMENT APPROPRIATION BILL

Mr. CRAMTON. Mr. Speaker, I present, for printing under the rule, a privileged report from the Committee on Appropriations returning the bill (H. R. 14675), the Interior Department appropriation bill, and the amendments of the Senate thereto, with the recommendation that the amendments be disagreed to and the bill sent to conference.

The Clerk read the title of the bill.

The SPEAKER. Referred to the Union Calendar and ordered printed.

Mr. GARNER. Mr. Speaker, may I ask the gentleman when he expects to call up this report?

Mr. CRAMTON. I thought of preferring a unanimous-consent request now. I am very anxious to get this bill in conference and through conference as early as possible, and if it is agreeable to the Members of the House, I would be glad to ask unanimous consent to send it to conference.

Mr. GARNER. That is a matter for the gentleman from Tennessee [Mr. BYRNS] and his colleague to consider.

Mr. CRAMTON. Mr. Speaker, I ask unanimous consent that the Senate amendments be disagreed to and a conference with the Senate asked for.

The SPEAKER. The gentleman from Michigan asks unanimous consent that all Senate amendments to the bill (H. R. 14675) be disagreed to and that a conference with the Senate be requested. Is there objection?

Mr. GRIFFIN. Mr. Speaker, I object.

Mr. GARNER. Mr. Speaker, will not the gentleman from New York reserve his objection, so that the gentleman from Tennessee [Mr. BYRNS] may make a counterproposition?

Mr. GRIFFIN. Mr. Speaker, I will be pleased to withhold the objection.

Mr. BYRNS. Mr. Speaker, if the gentleman will withhold his objection and reserving the right to object, I wish to submit a parliamentary inquiry. It is this: This bill making appropriations for the Department of the Interior came back to the House with 145 Senate amendments. It was referred by the Speaker to the Committee on Appropriations without being laid before the House. The Committee on

Appropriations has just this moment reported the bill back with the amendments by a majority vote with the recommendation that the amendments be disagreed to and the bill be sent to conference. I want to submit this parliamentary inquiry in view of those facts. The bill now being on the calendar, I wish to inquire whether it is a privileged matter, and whether any Member of the House, provided he can obtain recognition by the Speaker, is privileged to make a motion that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of these Senate amendments, so that the whole House may have an opportunity to pass upon them?

The SPEAKER. The Chair thinks the situation is this: The bill has just been ordered reported, but the report has not been printed, and any motion to be privileged would require the direction of the Committee on Appropriations. Therefore nothing would be in order at this stage except by unanimous consent.

Mr. BYRNS. I understand the Chair now to limit the ruling as to to-day. After the report has been submitted——

The SPEAKER. The Chair does not limit it at all. To-morrow, the bill being on the calendar, the Chair thinks that if the committee authorized any gentleman to take any appropriate action, it being a privileged bill, it would be proper.

Mr. CRAMTON. If the gentleman will permit, I think this will meet the gentleman's views——

Mr. BYRNS. One moment. I want to say this to the gentleman: As I have stated, this bill has 145 Senate amendments. I do not want to cause any delay and I do not intend to ask that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of all these Senate amendments. So far as I am concerned I am perfectly willing that this bill may be sent to conference on all amendments save amendment 144 which carries the $25,000,000 appropriation for drought relief.

Mr. CRAMTON. What does the gentleman want to do with that?

Mr. BYRNS. I think the gentleman should give the House an opportunity for such discussion as may be proper on the proposed amendment and the opportunity to vote upon that particular amendment before sending it to conference.

I know the gentleman announced in committee that he was going to propose to the House to bring that Senate amendment back for a vote before final action was taken on it.

But I wish to suggest that if the gentleman will adopt the method that I propose we will expedite the consideration of the bill, for the reason that if the House should adopt it with an amendment, of course that disposes of the main matter in controversy in the bill. If the House should on a record vote refuse to adopt it, the gentleman will have the record vote behind him when he comes into conference with the conferees. The gentleman from Michigan is proposing to take these 145 amendments to conference, and it may be 30 days before the conferees report. I submit to the gentleman that under all the circumstances he ought to be willing to permit the House to vote on that amendment at this time.

Mr. CRAMTON. Mr. Speaker, I want to say to the gentleman and say to the House that the great difficulty I have with this bill is to know just what is going to satisfy the House and, particularly, the gentlemen on that side of the House. I sincerely desire to send it to conference as quickly as possible, and I desire to handle it in conference as expeditiously as I can and get it back to the House.

The rules provide that an amendment put on in the Senate, not authorized by existing law, must be brought back to the House for a separate vote. It can not be agreed to in conference. That is the ordinary procedure which I have had in mind. I have been told that Members on the Democratic side of the House to-day have generally been told that I wanted to hold it in conference for 30 days. I have no purpose of that kind; I desire to get the bill back as quickly as I can, and I want to take the course that will get it into conference as soon as possible. If the gentleman from Tennessee wants the matter expedited, I am prepared to go along with him. But I am afraid that if I agree with him that somebody else will say that we are playing politics.

Mr. BYRNS. I do not question the sincerity of the gentleman from Michigan. We all know that one member of the conference can not control the situation, and when you have 145 amendments only one of which is provocative of a controversy——

Mr. CRAMTON. There are others that might provoke controversy. It seems to me in the interest of expedition that we ought not to go into Committee of the Whole on all the 145 amendments. That might take several days.

Mr. BYRNS. Let us make this agreement, if the other Members present are willing. Why does not the gentleman ask that we disagree to all the amendments in the bill save this particular one, and let that amendment come up for consideration under the regular rules of the House? We can dispose of that very quickly to-morrow, and the gentleman will have that much behind him, which I think will prove to be the major difference in the conference.

Mr. CRAMTON. How long a debate does the gentleman think would be necessary on that one subject?

Mr. BYRNS. Oh, I should think an hour on a side would be sufficient. I really think the gentleman could well give more than that. There are several gentlemen who want to discuss it. I think, however, we could cut down the time to an hour on a side.

Mr. CRAMTON. Mr. Speaker, I ask unanimous consent that all the amendments of the Senate to the Interior Department appropriation bill, except amendment No. 144, be disagreed to, that amendment No. 144 thereafter be taken up for direct action by the House, in the House as in Committee of the Whole, that debate be limited to two hours, one hour to be controlled by the gentleman from Colorado [Mr. TAYLOR], and one hour by myself, at the end of which time the previous question shall be considered as ordered on amendment No. 144, and all amendments thereto, and that thereafter a conference be asked for and conferees be named.

Mr. O'CONNOR of New York. Reserving the right to object, did the gentleman include the time to be used?

Mr. CRAMTON. That would be my purpose, because I do not want any delay upon this bill, which, I may say, outside of the $25,000,000 Red Cross amendment, carries $34,000,000 of money to be immediately available for construction, and our committee sought to make that available in December. We have not been successful in that, however. The following is a statement of that construction program which will materially relieve unemployment in many communities:

Construction funds, by States and services, included in Interior appropriation bill, 1932, as it passed the House, immediately available

	Amount	Total
Arizona:		
Indian	$1,255,500	
Parks	434,300	
Reclamation	20,000	
		$1,709,800
Alaska:		
Indian	275,000	
Parks	163,100	
		438,100
Arkansas: Parks		4,000
California:		
Indian	17,500	
Parks	1,344,065	
Reclamation	215,000	
		1,576,565
Colorado:		
Indian	75,000	
Parks	194,500	
Reclamation	15,000	
		284,500
District of Columbia:		
Institutions	2,792,000	
Parks	20,000	
		2,812,000

Construction funds, by States and services, included in Interior appropriation bill, 1932, as it passed the House, immediately available—Continued

	Amount	Total
Hawaii: Parks		$26,900
Idaho:		
Parks	$2,700	
Reclamation	340,000	
		342,700
Kansas: Indian		120,000
Maine: Parks		18,000
Michigan: Indian		38,000
Minnesota: Indian		28,000
Mississippi: Indian		8,000
Montana:		
Indian	428,800	
Parks	978,300	
Reclamation	566,500	
		1,973,600
Nebraska:		
Indian	7,000	
Parks	1,700	
		8,700
Nevada: Indian		41,600
New Mexico:		
Indian	766,400	
Parks	69,900	
		836,300
North Carolina: Indian		68,000
North Dakota: Indian		110,000
Oklahoma:		
Indian	287,000	
Parks	16,000	
		303,000
Oregon:		
Indian	130,000	
Parks	474,400	
Reclamation	3,250,000	
		3,854,400
South Dakota:		
Indian	477,500	
Parks	7,200	
Reclamation	150,000	
		634,700
Texas: Reclamation		100,000
Utah: Parks		49,500
Virginia: Parks		16,500
Washington:		
Indian	3,600	
Parks	831,675	
Reclamation	796,000	
		1,631,275
Wisconsin: Indian		65,500
Wyoming:		
Indian	111,000	
Parks	1,269,710	
Reclamation	17,000	
		1,397,710
Total		18,497,350
Undistributed:		
Roads, Indian Service	500,000	
Medical, Indian Service	100,000	
		600,000
Arizona-Nevada: Boulder Canyon		15,000,000
Grand total		34,097,350

The SPEAKER. The gentleman from Michigan asks unanimous consent that all of the amendments to the Interior Department appropriation bill, except amendment No. 144, be disagreed to, that amendment No. 144 shall be considered in the House as in Committee of the Whole, with the understanding that there shall be two hours of debate, one hour to be controlled by the gentleman from Michigan, and one hour to be controlled by the gentleman from Colorado, at the end of which time the previous question shall be considered as ordered. Is there objection?

Mr. LAGUARDIA. And during these two hours of debate any proposed amendment will have to be introduced?

Mr. CRAMTON. The whole thing to be disposed of in the two hours, so far as debate is concerned.

Mr. CHINDBLOM. The gentleman from Michigan will be in control of the legislation?

Mr. CRAMTON. I shall be in control of the legislation, but my view is that at the end of two hours the previous question shall be considered as ordered on amendment No. 144 and all amendments thereto, and that thereafter conferees shall be named.

Mr. LAGUARDIA. And amendments to amendment No. 144 would be in order at any time during the two hours?

Mr. CRAMTON. As I understand it, any amendment that is germane.

Mr. BYRNS. I understand that they may be offered during the two hours and may be considered pending, to be voted on after the previous question has been ordered.

Mr. CRAMTON. Yes.

Mr. GARNER. Not only that, but under the rules of the House of Representatives after debate is exhausted one can offer amendments without debate.

Mr. CRAMTON. I have no desire to cut off amendments.

Mr. GARNER. The gentleman would not want to cut off amendments after two hours of debate?

Mr. CRAMTON. I do not think that unexpected amendments should be offered when we have no chance to discuss them. Therefore, I think they should be offered within the two hours.

Mr. BYRNS. Let it be understood that any amendments that are germane and in order may be offered during the two hours of debate, to be considered pending, and to be voted on after the previous question is ordered.

Mr. CRAMTON. Certainly, the vote might be taken; but I think the offer should be made during the debate.

Mr. TAYLOR of Colorado. Why not have it understood that those amendments shall be offered during the first hour, so that we will not be surprised with a lot of things at the end of debate?

Mr. LAGUARDIA. As I understand it, when under the 5-minute rule a Member who holds the floor may offer an amendment and have it disposed of. I would like to know if we are to offer it under the 5-minute rule, and if it is coupled with the request that the time be controlled, how would Members get recognition?

The SPEAKER. The Chair thinks that when a bill is considered in the House as in Committee of the Whole, it is considered under the 5-minute rule, but that the request is that in addition to the consideration of the amendment under the 5-minute rule there shall be two hours of general debate. That is the way the Chair understands it.

Mr. CRAMTON. Mr. Speaker, my thought is this: That the control of the time should be in the gentleman from Colorado for one hour and one hour in my control, and that the 5-minute rule to that extent would not obtain.

Speakers would have the amount of time they are yielded.

Mr. LAGUARDIA. But, at the end of that, we naturally take up the amendments under the 5-minute rule.

Mr. TILSON. No. As I understand——

Mr. LAGUARDIA. That is the understanding of the Speaker.

Mr. TILSON. I think the intention of the request is that all debate shall be limited to two hours, and that the 5-minute rule shall only apply as to the offering of amendments and debate upon amendments during that time. We oftentimes, in committee, limit debate and limit control, just as we have attempted to do here.

Mr. O'CONNOR of New York. Mr. Speaker, reserving the right to object, we do not limit control in the committee, do we?

Mr. TILSON. We sometimes do, by unanimous consent.

Mr. CRAMTON. I feared that whatever request I made would not meet with entire approval. That is one reason why I hesitated to do it.

Mr. BYRNS. Well, it might be agreed to if submitted.

Mr. CRAMTON. I have made the request that the limitation of debate be two hours, at the end of which time the previous question would be considered as ordered. Pending amendments would be voted on in the meantime.

Mr. CHINDBLOM. Will the gentleman yield?

Mr. CRAMTON. I yield.

Mr. CHINDBLOM. But, what will be pending before the House?

Mr. CRAMTON. Amendment No. 144 and any amendments thereto that had not been voted upon before.

Mr. CHINDBLOM. There should be a pending motion either to concur in the amendment or to recede.

Mr. CRAMTON. Oh, of course; the first thing I would do would be to move that the House disagree to the Senate

amendment. If some one wishes to amend, they would offer a motion to concur, with an amendment.

Mr. CHINDBLOM. I wanted to make it clear that the amendment is not pending before the committee in any other form or in any other way.

Mr. CRAMTON. Oh, no. It will be in the usual way.

Mr. Speaker, may I make the request again?

The SPEAKER. Certainly.

Mr. CRAMTON. That all amendments except amendment No. 144 be disagreed to; that as to amendment No. 144 it shall be taken up for separate consideration; that the debate thereon and the offering of amendments thereto shall be limited to two hours, at the end of which time the previous question shall be considered as ordered on amendment No. 144 and all amendments thereto, and any amendments that have not previously been voted upon will then be voted upon and disposed of and then conferees will be named. The time will be controlled, one hour by the gentleman from Colorado, Mr. TAYLOR, and one hour by myself, to be yielded in our discretion.

The SPEAKER. Does the Chair understand that under the suggestion, amendments will at all times be in order during the two hours?

Mr. CRAMTON. The offering of amendments; yes. My suggestion would be that it would be helpful to the House if gentlemen who desire to offer amendments might have them read at the beginning of debate, for the information of the House, so that we would know what we are talking about.

Mr. BYRNS. That is all right.

Mr. CRAMTON. That would not come out of the time, necessarily. They could just be offered for the information of the House.

Mr. LAGUARDIA. Mr. Speaker, this does violence to our 5-minute rule. It might establish a precedent whereby the 5-minute rule might be destroyed. The gentleman can stop debate at any time. He can close debate on any amendment after five minutes.

Mr. CRAMTON. My desire, in the interest of expedition, is to have the time fixed when debate will stop.

Mr. LAGUARDIA. You can move that under the 5-minute rule at any time.

The SPEAKER. May the Chair make a statement? It is rather difficult for the Chair to quite understand the significance of this proceeding. May the Chair make this suggestion, in view of the lateness of the hour and the novelty of the proceeding, that the gentleman from Michigan [Mr. CRAMTON] confine his request to unanimous consent at this time, merely to disagreement with all amendments, except amendment No. 144. To-morrow morning, of course, it would be in order, as a privileged matter, to move to go into the Committee of the Whole House on the state of the Union for the consideration of amendment No. 144. The Chair does not think any other sort of consideration would require unanimous consent. It occurs to the Chair it might be well for the gentleman to limit his request in this way.

Mr. CRAMTON. I think I will withdraw the whole proposition, then, Mr. Speaker. I had thought, since the gentleman from Tennessee [Mr. BYRNS] had expressed a wish that I was willing to conform to, I would make the request, but by to-morrow noon I may meet an entirely different set of circumstances. I would not want to feel bound at all by any discussion to-night, except that we do come to an agreement. There is nothing revolutionary about this. It is all by unanimous consent.

Mr. BYRNS. The gentleman understands that I have no objection to his request.

Mr. CRAMTON. I anticipated that any request I made would meet with a lot of objections.

Mr. BYRNS. I have no objection.

Mr. GARNER. There is no objection to the request made by the gentleman from Michigan.

Mr. TAYLOR of Colorado. I do not think there is any objection on this side of the House.

The SPEAKER. The Chair is not clear in his mind as to exactly what is involved in the request to consider Amendment No. 144 in the House as in Committee of the Whole, with the understanding that there shall be two hours of debate.

Mr. TILSON. I think the Committee of the Whole disappeared in the last request. The gentleman from Michigan simply asked that the bill be considered in the House.

Mr. CRAMTON. In the House; yes.

Mr. GARNER. As in Committee of the Whole?

Mr. TILSON. No; just consider it in the House and that there be two hours of debate.

The SPEAKER. Will the gentleman from Michigan repeat his request?

Mr. CRAMTON. Mr. Speaker, I ask unanimous consent that all of the amendments except amendment No. 144 be disagreed to; that as to amendment No. 144 the same be taken up in the House for consideration and that there be two hours of debate, one-half to be controlled by the gentleman from Colorado [Mr. TAYLOR] and one-half by myself; during that two hours amendments may be offered for the information of the House and considered as pending, and that at the end of the two hours or whenever debate shall be completed, if prior to that time, the previous question be considered as ordered, a vote taken on any amendments pending, and that after disposing of amendment No. 144 and all amendments thereto, conferees be named.

Mr. O'CONNOR of New York. Mr. Speaker, reserving the right to object, suppose that during the two hours some Member has an amendment which he not only desires to offer but desires to talk about? As I understand this request he would have to obtain the time from those in control of the time and could not in his own right get five minutes to discuss his amendment.

Mr. CRAMTON. That is correct.

Mr. TILSON. That is the intention.

The SPEAKER. As the Chair understands it, under those circumstances any Member who was given time by those in control of the time would have an opportunity to offer amendments but not debate them.

Mr. CRAMTON. I think that should be the case, and it would only be fair.

Mr. WILLIAM E. HULL. Within the two hours?

Mr. CRAMTON. Within the two hours.

The SPEAKER. Does the Chair also understand that at the expiration of the two hours amendments would be in order?

Mr. CRAMTON. No amendments would be offered after the expiration of the two hours.

Mr. SIMMONS. Under that last statement if a Member were not yielded time how would he get an opportunity to offer an amendment?

The SPEAKER. It would be out of order.

Mr. SIMMONS. There should be some way for an individual Member of the House to have an opportunity to submit amendments.

The SPEAKER. The Chair feels it his duty to be absolutely certain—the matter being important—that he puts the question in the proper way and he will endeavor to put it now. The gentleman from Michigan asks unanimous consent that all amendments except amendment No. 144 be disagreed to; that in the case of amendment No. 144 there shall be debate in the House for two hours, the time to be equally divided between the gentleman from Michigan [Mr. CRAMTON] and the gentleman from Colorado [Mr. TAYLOR]; that during that time any Member yielded time may offer an amendment or any motion relating to the disposition of the matter; that at the close of the two hours the previous question shall be considered as ordered on everything pertaining to the consideration of amendment No. 144 at that time; that the House shall ask for a conference and that the Chair appoint conferees. Is there objection?

Mr. GARNER. Mr. Speaker, a parliamentary inquiry. This would not prevent a motion to recommit with instructions?

Mr. CRAMTON. Mr. Speaker, it would.

Mr. GARNER. On the final passage of the bill it would go to the third reading, and any agreement made here

would not prevent, under the rules, a motion to recommit with instructions.

The SPEAKER. It is not a bill that the House would be considering. It is simply a report from the Committee on Appropriations and the House will be considering only Senate amendments and not the bill itself. In view of the agreement between the House and the Senate on all matters except the Senate amendments, nothing is under consideration except the Senate amendments.

Mr. CRAMTON. And I want to be perfectly frank, Mr. Speaker, by including the appointment of conferees; it is my thought there would be no motion to instruct the conferees. This would seem to be entirely unnecessary and the appointment of conferees being provided for, that would be excluded.

Mr. SIMMONS. Mr. Speaker, under this procedure, how will a Member of the House, who is not yielded time, be permitted to offer amendments to this one amendment?

The SPEAKER. He would not be permitted to offer amendments.

Mr. SIMMONS. I think it ought to be understood, then, that the proposition of offering amendments will be entirely in the control of those to whom either the gentleman from Michigan [Mr. CRAMTON] or the gentleman from Colorado [Mr. TAYLOR] yields time.

Mr. CRAMTON. That is quite an ordinary situation, and is always so.

The SPEAKER. The Chair thinks so. Is there objection?

There was no objection.

Mr. CRAMTON. May I say, Mr. Speaker, my present thought would be to call this up the first thing to-morrow morning.

May I particularly call the attention of Members to the hearings which have been held the past few days by the Committee on Appropriations with reference to the appropriation of $25,000,000 proposed by the Senate to be administered as a general relief fund by the American National Red Cross. Those hearings include statements by the Secretary of Agriculture, the Commissioner of Public Roads, the Chief of Engineers, and others as to the use and effect of the $116,000,000 emergency-construction appropriation recently made by Congress for the relief of unemployment and the $45,000,000 seed-loan appropriation for relief of the drought areas. Suffice it to say now that we are assured that the $116,000,000 will very soon be all translated into contracts and the actual employment of men all over the United States. Also that the $45,000,000 is expected to be sufficient to fully meet the seed-loan needs.

Further, and no doubt of even greater interest to the House, will be the very frank and able presentation of facts by Chairman John Barton Payne with reference to the drought emergency, the need for relief, the methods and policies of the American National Red Cross, its resources and its full capacity, without Government appropriation, to meet all relief needs in the drought areas, and the disastrous effect the proposed appropriation would have upon the usefulness, not only of the Red Cross but of many other relief agencies, now and hereafter. I hope every Member of the House, before a vote is taken on this matter, will read Judge Payne's interesting statement.

I will only include now, under the permission given me, the following statement issued this afternoon by John Barton Payne, chairman of the American Red Cross:

No thoughtful member or friend of the Red Cross will be deceived by the charge made in the Senate that in refusing to administer a twenty-five-million general relief fund, proposed to be voted by the Congress, the Red Cross is "playing politics"; on the contrary, the Red Cross has, after the most careful consideration, determined that the welfare of the Red Cross and those it is now helping and will help in the future requires that it will continue its historic voluntary rôle and refuse to be drawn into politics.

In August the Red Cross assumed responsibility for drought relief and has extended relief to the drought sufferers in the 21 States. The actual work has been done through the local Red Cross chapters and their branches; that is, the neighbors and friends of the sufferers in their home localities have extended the actual relief, have determined the amount and character of the ration to be given, the National Red Cross organization making cash grants to the chapters as needed. In addition to this in many localities a hot luncheon is served to the children in the schools. This work will be continued until it is completed.

The twenty-five million bill under discussion is a general relief bill, and not a drought relief bill. The bill provides as follows:

"There is hereby appropriated * * * $25,000,000 to be immediately available and to be expended by the American National Red Cross for the purpose of supplying food, medicine, medical aid, and other essentials to afford adequate human relief in the present national emergency to persons otherwise unable to procure the same."

This contemplates—

a. That the $25,000,000 shall be expended by the Red Cross.

b. That is, be expended anywhere within the United States to persons otherwise unable to procure relief.

This would require the Red Cross to expend this money everywhere in the United States where needed—unemployment in the cities, in the drought area, and anything else.

Unemployment relief is being given by splendid relief agencies in the cities throughout the country, such as the Salvation Army, the great Catholic, Jewish, and Protestant charitable organizations, and those which, like the Red Cross, are entirely nonsectarian. Funds for relief are being raised by voluntary subscription and by 360 community chests. For the Red Cross to undertake the administration of this bill would seriously embarrass all these agencies and require the setting up of organizations by the Red Cross, duplicating the agencies now operating. This would be enormously expensive, harmful to other agencies, and useless. It could not turn over a dollar of the money to other agencies to be expended, because by terms of the bill the money must be expended by the Red Cross.

If it is conceivable that the Red Cross could go into the cities, create organizations, duplicate the work of other agencies, in order to comply with the will of Congress, the sum appropriated by this bill is hopelessly inadequate.

The president of the Federation of Labor states that there are 5,700,000 people unemployed. Assuming this is true and that each one represents a family of four, including himself, this would provide just a fraction over $1 per person. The consequences would be that the Red Cross would have created organizations duplicating agencies in hundreds of cities, assumed an impossible task under the circumstances, with a fund so small, in view of the enormous problem confronting it, as to invite certain failure and probable disaster.

For these reasons the central committee, after mature consideration, felt constrained to refuse to assume the administration of the bill.

MEMORIAL SERVICES IN THE HOUSE OF REPRESENTATIVES

Mr. CROWTHER. Mr. Speaker, I present a unanimous-consent resolution and ask for its immediate consideration.

The SPEAKER. The gentleman from New York offers a resolution, which the Clerk will report.

The Clerk read as follows:

UNANIMOUS-CONSENT RESOLUTION PRESENTED BY MR. CROWTHER

Mr. Speaker, I ask unanimous consent that the annual memorial service of the House of Representatives be held on Thursday, February 19, at 12 o'clock meridian; that the order of exercises and proceedings of the service be printed in the CONGRESSIONAL RECORD; that all Members be privileged to extend their remarks in the CONGRESSIONAL RECORD; and that the Speaker be authorized to adjourn the House upon completion of the program without motion.

The SPEAKER. Is there objection? [After a pause.] The Chair hears none.

The resolution was agreed to.

IMMIGRATION FROM MEXICO

Mr. BOX. Mr. Speaker, the gentleman from Ohio [Mr. JENKINS] and the gentleman from Texas [Mr. Box] made certain special studies with respect to certain phases of the immigration problem, which they reported to the committee in print, and I now ask unanimous consent to extend my remarks by having that report printed in the RECORD.

The SPEAKER. Without objection, it is so ordered.

There was no objection.

Mr. BOX. Mr. Speaker, under authority granted me by the House of Representatives to print the results of special studies of certain phases of the immigration problem, I now present for printing a statement made by myself and Hon. THOMAS A. JENKINS, of Ohio, on immigration from Mexico, which it was contemplated would be the first of several statements of special studies of immigration from countries of the Western Hemisphere.

The statement is as follows:

HOUSE OF REPRESENTATIVES,
COMMITTEE ON IMMIGRATION AND NATURALIZATION,
Friday, March 14, 1930.

STATEMENTS SUBMITTED BY HON. THOMAS A. JENKINS AND HON. JOHN C. BOX, MEMBERS OF THE HOUSE OF REPRESENTATIVES

Mr. Chairman and gentlemen of the committee, in presenting some of the reasons why one of these bills, or some measure serv-

ing their purpose in a better way, should be enacted, we shall deal first with immigration from Mexico, because that presents the most acute phase of the problem of immigration from the Western Hemisphere. The need for quota provisions applicable to all Western Hemisphere countries is real and urgent. Moreover, legislation restricting immigration from all countries of the Western Hemisphere should be general. Besides other difficulties, a presentation of the problems created by immigration from all American countries (even as fully as we are undertaking to treat the problems of Mexican immigration) would require more time and fill more printed space than can now be given to it.

The discussion will be grouped around three general questions: (1) What is the volume, extent, and distribution of this immigration, and what are the probabilities as to its future movement, if not checked by legislation? (2) What is the character of the Mexican peon population now migrating to America? (3) What effects are being produced by it upon our own industrial, economic, social, and racial problems?

I. NUMBER OF MEXICAN IMMIGRANTS, THEIR DISTRIBUTION, AND TENDENCY TO CONTINUE IN INCREASING OR DIMINISHING VOLUME

There are some hundreds of thousands of native-born Mexican people in the United States. In dealing with the numbers and distribution of Mexican immigrants an effort will be made to confine this discussion to foreign-born Mexicans, though in discussing the effect of this population upon industrial, economic, and social conditions it is practically impossible to separate the recently arrived Mexican immigrant from the older element of that population, though unquestionably many of the older and better elements are very much superior to the present incoming type. The latter has created the present problem.

The official reports of immigration from Mexico are very fallible. This is true to a greater extent of the older records made when the restrictions against that immigration were fewer and less attention was given to the movement. Even the later reports are not complete, because many enter illicitly and uncounted, while no effort is made by our Government to count all Mexicans returning to Mexico from the United States.

The main movement of Mexican immigration started after the enactment of the first temporary quota law of 1921. The census reports of 1900, 1910, and 1920 are of some value in showing the immigration of Mexican-born Mexicans to the United States beginning 30 years ago. In 1900 there were 103,393 foreign-born Mexicans in the country. The census of 1910 showed that we then had 221,215 of the same people, a net gain of Mexican aliens of 11,782 every year, even during the decade ending 20 years ago. The census of 1920 showed 486,418, or a net gain of 26,522 Mexican aliens every year of the decade ending 10 years ago.

As stated, Mexican immigration really started in force after the 1920 census. Of many estimates of the present foreign-born Mexican population of the United States, we have not seen one which placed the estimated number now here lower than 2,000,000, which would give us a net gain of about 150,000 per year since 1920, and if we cut that estimate to one-half, placing the present number at 1,000,000, which, in our judgment, is below the actual number, we will show a net annual gain of 51,358 foreign-born Mexicans during the decade ending with the census of 1930. The number is probably larger than that, but it may be expected that the transient character of much of this population will help other causes to prevent a full enumeration and showing of this population in 1930. But no device or circumstance will hide all the truth. A large increase of this part of our alien population will be shown by the next census reports.

The foregoing relates wholly to the foreign-born Mexicans. In dealing with the distribution, local increases, and character of this population and the effect it is producing, it has been impossible to keep the native-born and immigrant Mexicans entirely separate, though most of the problems dealt with in the following pages are created by the immigrant alien Mexicans.

During the latter half of 1929, we, as members of the House Committee on Immigration and Naturalization, made a survey of Mexican immigration for the purpose of learning and making known the salient facts pertaining to it. Even prior to that, one of the authors of this report, Mr. JENKINS, visited the border country to study these problems. His observations, together with his previous and subsequent studies, left him no doubt as to the gravity of the situation being created by this Mexican infiltration. The other joint author of this report, Mr. Box, lives in a border State and has spent much time in south and southwest Texas and the border country observing the Mexican population and the conditions created by it. During the present year the latter did very much of this work, visiting all of the larger cities and many sections of the States of Texas, Oklahoma, Kansas, Colorado, and New Mexico, and touching Mexico itself. These trips were not made with any official show and were not attended by receptions, banquets, and other distractions usually provided for congressional committees and other officials on such missions, but to study this problem as it exists among the people.

As a part of this survey, we requested Dr. Roy L. Garis, professor of economics at Vanderbilt University, one of the most learned and able students of the immigration problem, to make a special investigation of the subject and report upon it. Doctor Garis's report will be submitted for printing and will be found to contain much pointed and valuable matter bearing on the issues herein discussed and upon the whole problem. The special attention of the committee and of students of this question is called to Doctor Garis's report.

Another part of our investigation took the form of requests for reports sent to many people of various classes and callings, with blanks and return postage provided, calling for information on the salient features of this question, including, of course, the phases of the problem which this statement will attempt to summarize.

The reports which have been received to date came from the following classes of persons and organizations, in approximately the following numbers and proportions:

Retail merchants and business men	101
Farm-organization officials, such as secretaries of farm bureaus, granges, and individual farmers	212
Superintendents of schools, school officials, and persons specially interested in education	560
Health officers and persons and organizations interested in public health	338
Persons connected with labor organizations or specially interested in the condition of laboring people	112
Citizens not especially included in any of the groups named	93
Approximate total to date	1,416

Of the approximately 1,416 reports mentioned, 50 came from 20 post offices in 12 counties in Arizona; 249 from 153 post offices in 49 counties in California; 96 from 68 post offices in 44 counties in Colorado; 24 from 21 post offices in 17 counties in Illinois; 20 from 18 post offices in 15 counties in Iowa; 148 from 109 post offices in 75 counties in Kansas; 51 from 41 post offices in 31 counties in Michigan; 34 from 29 post offices in 26 counties in Nebraska; 35 from 26 post offices in 20 counties in New Mexico; 16 from 15 post offices in 13 counties in Ohio; 47 from 39 post offices in 37 counties in Oklahoma; 22 from 17 post offices in 17 counties in Oregon; 594 from 376 post offices in 218 counties in Texas; 11 from 9 post offices in 8 counties in the State of Washington; and 19 from 16 post offices in 16 counties in the States of Idaho, Montana, Nevada, Pennsylvania, and Wyoming.

Distribution of Mexican immigration

From all of the 957 post offices in 598 counties of the 19 States mentioned, extending from Texas and California on the south to Washington, Michigan, and Pennsylvania on the north, came reports showing that this Mexican immigrant population is present in these localities in noticeable numbers, disclosing an almost nation-wide distribution of this immigration.

In order to prevent legislation checking this immigration, an effort has been made to show that these migrating Mexican peons all, or nearly all, return to Mexico and, therefore, are not increasing our permanent Mexican peon population. Another claim is that beginning in 1929, nearly a year before these hearings, that immigration had been effectually reduced by a better enforcement of the law.

But, notwithstanding all these statements, we assert that this alien Mexican population has been increasing during the past 12 months up to and including the time of the making of these reports to us as members of this committee, all of which have been made within the past six months.

These reports show that by far the greater proportion of the Mexicans present in these communities are foreign born.

Mexican population increasing

Answering queries whether this Mexican peon population is increasing in the respective localities from which the reports come, 781 reports say that this population is increasing in the majority of the localities reporting, while 523 reports say that this population is not increasing in the minority of the communities from which those reports come. Of the smaller number reporting on the speed of these increases, 391 say that the increases are rapid in those localities, while 248 of the reports showing local increases say that such increases are gradual.

An overwhelming majority of those reporting increases of this population state that the marked increase began since 1921, when the quota system began to be applied to Old World countries, while a minority of the increases are reported as having begun prior to 1921. This last is consistent with the 1920 census figures showing a net average addition of 26,522 persons born in Mexico for each year during the decade preceding 1920, while the large majority of reports showing increases of this population as beginning since 1921 is in harmony with the many estimates of a very heavy increase of this population during the present decade.

As bearing upon the question whether these Mexicans return to Mexico, and therefore do not materially add to the permanent alien Mexican population of the country, the following are a slight fraction of the statements in these reports directly on the question of the increase of this population:

Replies to inquiries as to whether the Mexican population is increasing and the size of Mexican families is larger in the localities from which the reports come

"Increasing rapidly. The whites absolutely refuse to associate with Mexicans."—Miss Lena Wattenburg, farmer's daughter and secretary of the Grange, Fort Lupton, Colo.

"All the big contractors, the railroads, trucks, and all kinds of cars are bringing in the lowest class of Mexican every day. The big contractors of Texas cities are not giving a white man a job as long as they can get a greaser. A white man can't get a job at any price after he reaches 45."—Charles N. Thetford, Houston, Tex.

"Increasing rapidly; has doubled itself in five years."—Thomas C. Doak, M. D., city health officer, South San Francisco, Calif.

"Mexican population in this county is increasing."—Mrs. Etta Hadley, lecturer, Iowa State Grange, Newton, Iowa.

"Becoming quite numerous on sugar-beet farms and at mines. Mexico should be on quota basis, same as other countries."—Judd McCraw, Butte, Mont.

"In view of their high birth rate and the falling rate among white people, if the present immigration keeps up * * * a large part of Texas will have become thoroughly Mexicanized."—William N. Michels, county Democratic executive committeeman, Houston, Tex.

There are too many Mexicans coming into this country, to such an extent as to injure the chances for an American to secure fair employment."—Loran L. Palmerton, justice of the peace, Loyalton, Calif.

"If this influx of Mexicans to the United States is not checked or stopped, it is going to badly oppress the American workingman."—A. L. Hill, farmer, route No. 1, Hillister, Calif.

"The increase in Mexican population over a period of 12 years is about 1,300 per cent."—Charles Curnow, restaurant owner, Miami, Ariz.

"The permanent Mexican population in this territory is constantly increasing."—H. M. Brown, mine broker, Miami, Ariz.

"Mexican immigration is fast overwhelming and fast blotting out white civilization in this region."—Harry Cross, deputy sheriff, Superior, Ariz.

"We are very much in favor of restricting Mexican immigration and feel our immigration laws relating to Mexicans are 10 years behind the times. The influx of Mexican population which far exceeds the growth of American population is a very great problem which we are now facing. It will become even greater if something is not done in the near future to remedy the situation."—C. R. Holbrook, superintendent city schools, San Bernardino, Calif.

"Seven Mexican couples will have about 56 children. The children of these families will eventually number about 190 The white man is having his day and California may be the stage on which he will have to fight his last fight."—W. H. Marquis, fruit grower, of Monrovia, Calif.

"High Mexican birth rates have long been a problem in southern California, and Doctor Dickie (head of the State department of health) believes that the northern counties are now beginning to show the same conditions."—Henry Presser, Berkeley, Calif.

"Mexican birth rate is so high and Mexican immigration so great that ia appears not far distant when this will be a Mexican territory."—W. W. Fenton, city health officer, San Bernardino, Calif.

"We have had on our relief rolls families of from 10 to 14, 15, and 16 children. They multiply into these figures compared with American families of 2, 3, and 4."—Sacramento Church Federation, Sacramento, Calif.

"Average number of children, 10."—B. B. Wells, city and county health officer, Riverside, Calif.

The census reports, supplemented by much other indisputable data, show that the movement of alien Mexican immigration to the United States began in a noticeable but at first small volume 30 years ago, and that the movement has been rapidly increasing from decade to decade. The causes which produce it continue to operate in full force, while the checking of immigration from other countries tends to increase it. To the student inquiring whether this influx will continue in large volume, unless checked by law, its history during recent decades and an understanding of its causes give only an affirmative answer.

Mexicans breed more rapidly than Americans

Several hundred inquiries were addressed to physicians and others having special opportunities to observe the numbers of children born to Mexican parents and the size of their families. These requests brought 324 replies on this point, of which 244 answered that Mexicans do have larger families than our own people, and 80 report that they do not. The preponderance in the number of reports showing that they have larger families is greater in those reports coming from States where Mexicans are most numerous and are best known. Illustrating this are Arizona, whose 11 reports on the subject are unanimously in the affirmative; California, 70 of whose 77 reports on the point show that Mexican families are larger; and Texas and New Mexico, reports from which show above an average number of affirmative replies; while reports on the point from Ohio and Oklahoma show an equal number of negative and affirmative answers. A majority of the replies from Michigan give a negative answer. In States like Michigan and Ohio, near the Canadian line, this immigration is newer and consists more of men who are either unmarried or have left their families behind.

The rapidity with which these Mexican peon people multiply greatly increases the menace which this immigration brings.

II. CHARACTER OF THE MIGRATING MEXICANS

Mexico has a population of approximately 15,000,000, a very small part of which is the upper and ruling class of people of pure Spanish descent. Almost none of the superior white people of Mexico are migrating. The most ignorant, most oppressed, and poorest people of that country, composing its peon class, are furnishing almost the entire volume of Mexican immigration.

Of the hundreds of reports on the classes of work which these people perform in the neighborhoods reporting, the following are most prominently mentioned: Work on railroads, in mines and smelters; producing and harvesting sugar beets and cotton; growing and gathering onions, tomatoes, lettuce, and other crops, and miscellaneous farm work; steel mill, foundry, factory, and packing-house work; lumbering, sheep herding; street and road paving. The reports list nearly all of them as engaged in common, unskilled labor, though, undoubtedly, some of those who have been longest here are rising into the work formerly done by semiskilled American labor.

Housing and living conditions—sanitation and health

The housing and living conditions of this population are bad, as shown by the overwhelming majority of the reports on the subject. Of about 1,304 reports covering this point, 216 say that their housing and living conditions are good, 728 declare them to be bad, while 360 of the reports state that they are very bad. Below are given a few of the many quotations which might be made from reports of the housing and living conditions of Mexicans—mainly migrant alien Mexicans—in the United States.

On the influence which this population has upon conditions affecting sanitation and health, 124 reports say that it is good and 811 reports show that it is bad. Housing and living conditions, sanitation, health, and disease are so inseparably connected that statements on these subjects are often combined by persons reporting on them. The following are some of the many special reports on these phases of the problem developed by the presence of this population wherever it collects:

Answers to inquiries as to effect of Mexican population on sanitation and health and disease prevalent in that population

"Ninety per cent of the Mexicans live in shacks and huts that a white man would not use for living quarters at all. Frequently, a family of from 5 to 10 live in one room."—S. J. Isaacks, lawyer, El Paso, Tex.

"Living quarters are merely shacks, very crowded, several families living together, in many cases very insanitary. Increase apparently too great, as shown by our hospital cases."—Dr. Ernest Wright, county health officer, Houston, Tex.

"Conditions deplorable. Living in shacks, children running around half clothed, undernourished, and unclean, present a sight hardly believed by people outside this State."—William Haensler, vice president Federal Employees Association, San Antonio, Tex.

"Mexicans are carriers of lice, bedbugs, and venereal diseases. They help spread disease."—Thomas W. Kelly, plumbing and steam fitting, Billings, Mont.

"The Mexican condition, so far as sanitation is concerned, is very bad."—J. E. Evans, La Grande, Oreg.

"Unless the tubercular and venereal Mexican is cared for through the public health department, he is likely to become a public-health problem of sufficient size to affect the general public health. Considerable tuberculosis and venereal; these two are probably the chief among their communicable diseases."—J. L. Pomroy, M. D., health officer, Los Angeles County, Los Angeles, Calif.

"They are more trouble than all other classes put together. tuberculosis, gonorrhea, infectious trachoma, ophthalmia, heads full of cooties."—F. R. Elder, city health officer, Lincoln, Calif.

"Very worst kind always, have contagious diseases, have just been responsible for a smallpox epidemic. Deliberately expose themselves to smallpox. We get the riffraff down here."—S. T. Evans, M. D., city coroner, city health officer, Durango, Calif.

"Impetigo, smallpox, tuberculosis (especially), gonorrhea (80 per cent of this), mumps, whooping cough, measles, chicken pox, diphtheria. The crying outrage is the admission of Mexicans who are suffering from tuberculosis and other diseases."—J. A. King. county and city health officer, Ojaia, Calif.

"Head lice, skin diseases, eye troubles, etc., almost impossible to eradicate because of frequent migrations in and out and insanitary and loathsome conditions under which many live."—R. B. Haddock, district superintendent schools, Oxnard, Calif.

"Our welfare departments spend majority of efforts and money on Mexicans."—Stafford C. Edwards, secretary-treasurer county farm bureau, Colton, Calif.

"Mexicans tend to collect in villages living in crowded and insanitary dwellings. They have lice, skin diseases, venereal diseases, etc."—John W. Young, supervisor of attendance, Carpenteria, Calif.

"Public-health nurses have tried for years to clean up itch and lice in Mexican school children without much effect. All of our leprosy and much of our tuberculosis are among Mexicans—poverty, tuberculosis, syphilis, gonorrhea, scabies, pediculosis."—R. C. Main, county health officer, Santa Barbara, Calif.

"Brought in pneumonia and bubonic plague, amœba dysentery."—Sacramento Church Federation, Sacramento, Calif.

"I am personally afraid as regards California because they are bootlegged in along with liquor and opium, and they have any of the diseases you want to see: Diphtheria, glaucoma, undulant fever, syphilis and gonorrhea, typhoid fever, smallpox. I personally see only the hazard of the public-health side and it is a rotten mess."—William C. Colton, city health officer, president of chamber of commerce, president Fruit Exchange, Atwater, Calif.

"All childhood diseases; particularly high rate of syphilis and gonorrhea. Pneumonia is very common among the children, as are most respiratory infections. Principal sources of body lice and coefus."—John A. Ozevedo, health officer, Alameda County, Hayward, Calif.

"Have tuberculosis, multiplicity children's diseases, measles, smallpox, syphilis."—Charles F. Richardson, city judge and health officer, El Cajon, Calif.

"County hospital reports more cases of tuberculosis and social diseases in Mexicans than all other races together."—Ada York, superintendent of schools, San Diego, Calif.

"In 90 per cent of cases this immigration is determental to health, American ideals, morality, and American labor. The only group that does profit by Mexican immigration is the manufacturing group."—A. C. Kaeeneyer, district school superintendent, South San Francisco, Calif.

"A menace to remainder of community."—Robert King, grocer and meats, Camarillo, Calif.

"Menace to health, no attention paid to sanitation in homes."—Rowena M. Norton, county superintendent of schools, Woodland, Calif.

"Mexicans have no regard for sanitary conditions or quarantines. We have in the last months had to employ officers to watch day and night in spinal-meningitis quarantines."—Harry V. Benson, garage owner, Miami, Ariz.

"Most all Mexicans have had traces of syphilis, usually hereditary."—Virginia Walthall, county nurse, Prescott, Ariz.

"Nurses find more contagious and infectious diseases among Mexicans than elsewhere."—Miss Laura A. Hopper, county school superintendent, Prescott, Ariz.

The unemployment, irregular employment, lower wages, bad living conditions, and personal habits and characterstics of many of these unfortunate peon people are shown by reports of their gathering food for themselves from garbage cans in several centers, as illustrated by the followng quotations:

Gathering food from garbage cans

"Two observations particularly impress me; one is Mexican men, women, and children prowing in the alley garbage cans and searching them for food."—Fred De Armond, sales manager, laundry company, El Paso, Tex.

Mexican tamale peddler faces garbage charge

"A 50-year-old Mexican was arrested Tuesday by Officer H. N. Howard, who said he found the Mexican on commission row, at Main and Commerce, with two dead chickens and several rotten onions, which he had been picking out of garbage boxes.

"The Mexican was brought to the police station, where he was charged with a violation of the garbage act. Officers identified him as a hot-tamale peddler. He could not speak English and will be turned over to the immigration authorities, according to Captain of Police J. H. Tatum, and an effort will be made to send him back to Mexico. He has only been in the United States a few months, officers said."—From the Houston Chronicle, Tuesday, November 26, 1929.

"They rummage my garbage cans every day almost for anything edible by man or beast."—L. O. Vermillion, El Paso, Tex.

One of the writers of this report recently saw two pitiful looking little Mexican girls gathering what appeared to be garbage from a garbage can at the rear of a Dallas wholesale grocer's establishment and had a photographer who accompanied him make a snapshot and motion picture of them in that act. He had reports that such practice was quite usual among those unfortunate people in their extreme poverty and unemployment.

The same gentleman saw an aged and apparently decrepit and needy Mexican woman doing the same thing in a back street in Austin, Tex., and had her unconsciously photographed in that posture and action.

Reports of the same revolting practice by the same unhappy people come from Denver, Colo.

"During every winter there is great economic stress among Mexicans on account of oversupply of labor and extremely low wages. The living conditions are a disgrace to our American civilization."—Harry A. Skinner, county superintendent of attendance, El Centro, Calif.

III. INFLUX OF MEXICAN PEON POPULATION PRODUCING BAD INDUSTRIAL, SOCIAL, AND RACIAL PROBLEMS

Mexican population in American schools

An overwhelming majority of the reports advise that Mexicans and whites attend mixed schools. Of 1,305 reports on this subject from several hundreds of communities in 19 States, 1,157 say that in those communities the Mexicans and whites attend the same schools, while 148 reports state that in the communities from which they come the children of the two races do not attend the same schools. As to whether this mixture of the children of Mexicans and whites in the schools is satisfactory, there were 1,088 answers. Of these 1,088 reports from States extending from the Mexican border to Idaho, Michigan, Ohio, and Pennsylvania, near the Canadian line, 546 reports advise that such mixed school attendance is not satisfactory to white people. This is quite a school problem to be added to all of the already existing troublesome, kindred problems.

Many miscellaneous statements in these reports make inevitable the conclusion that, in school attendance and in their capacity and willingness to be taught the things American schools should teach them, the children of this class of Mexicans fall far below the average American children.

Another race problem

Reports were sought as to the existence of situations giving indications of a race question. The answers in reports on this question give plain evidence that those reporting understood the inquiries to call for reports on such racial uncongeniality or antagonism as threaten outbreaks or racial hostility. Some of these last were from the same communities, but, in the main, they came from communities scattered throughout many counties in a dozen States, more or less. The story of the human race is filled with accounts of strife and suffering which inevitably result from the comingling of peoples in the midst of racial antipathies.

The 267 reports of definite indications of a race question between Mexicans and whites do not cover the whole story of racial antipathy as told by this survey. The 148 reports of separate schools for the two races add to it, while the majority reporting that school attendance of the two races mixed is unsatisfactory to whites, gives the race problem involved a still more disturbing aspect.

The following quotations from reports on school and race problems caused by the presence of this migrant Mexican population are fairly illustrative of the trend of the overwhelming majority of these reports:

Reports on school and race problems created by the Mexican population

"El Paso school enrollment last year, Mexicans 10,229, white American 5,878, negroes 240."—Fred De Armond, sales manager, laundry company, El Paso, Tex.

"It is going to bring serious trouble if these Mexicans are not stopped from coming here."—George F. Conklin, Houston, Tex.

"Some of our Mexican children look decidedly negroid, but we can not prove it and so can not send them to the colored schools where they probably belong. Very dirty. Many families live in one house. They wear dirty clothes and the children certainly need washing."—Cora Campbell, public-school teacher, Houston, Tex.

"From a school standpoint they make by their presence a very complicated situation. About 50 per cent of school children are Mexican. Their seasonable labor habits, using children, interferes with school appropriation for State and county."—Geo. A. Bond, superintendent of schools, Santa Paula, Calif.

"Whites just waiting for open season."—C. W. Casner, hardware, paint, sporting goods, and plumbing, Monrovia, Calif.

"This will be a problem the same as the Chinese, Japs, and other races which have had to be handled."—Sam A. Burrell, realtor, Brentwood Heights, Calif.

"Same as in Southern States between negroes and whites. Better no development than to have a foreign or race development. The people who do the work, till the soil, etc., will eventually own it. Why give our birthright away."—P. B. Fry, physician, district health officer, Benicia, Calif.

"Racial difficulties regarding school attendance growing."—S. J. Brainard, superintendent of schools, Tulare, Calif.

"There are six Mexicans to one white child in our junior high school. The Mexicans and whites attend the same schools, which is most disgusting. The Mexicans have now boycotted our new theater because the management has given them a separate section. If it wasn't for our strict police department, the race question would be serious."—Max R. Webb, retail merchant, Miami, Ariz.

"The Mexicans are directly responsible for the comparatively slow advancement of Arizona, New Mexico, and Texas, since they replace the whites and constitute a staggering burden for the comparatively small taxpaying settlers."—E. M. Jackson, owner and operator of mines, Dragoon, Ariz.

"Whites and Mexicans are antagonistic to each other at all times."—Milton E. Simms, secretary farm bureau, Duncan, Ariz.

"Attempts at segregation in schools; and their resistance; separate dance nights at the club; the existence of a 'Mexican village,' are indications of a race question."—Thos. H. Dowling, retail merchant, Superior, Ariz.

"In my daughter's class which graduated from the graded school last February there were 3 Mexicans, 3 Japs, and 1 Chinese in a class of 33. These Mexicans were very low class."—Jas. A. Armstrong, secretary Gilroy Grange, No. 398, Gilroy, Calif.

Intermarriage between whites and Mexicans, and Mexicans and negroes

A few instances of intermarriage between whites and Mexicans are shown in each of 429 reports from some 15 States, while small groups of instances of intermarriage between Mexicans and negroes are shown in 250 reports from some 14 States. These reports of intermarriage between whites and Mexicans and Mexicans and negroes do not usually tell of merely single instances of such intermarriages; they do usually indicate only a limited number of such marriage allegiances, altogether interlinking all three races, whites, Mexicans, and Negroes.

No other alien people entering America has created freer channels for blood intermixture through intermarriage than do these Mexicans, with whom both black and white races intermarry to a limited extent. White and Negro race stocks can not be kept separate when both intermarry, even to the limited extent of a few thousand instances, with some hundreds of thousands or millions and increasing numbers of Mexican immigrants. It must be kept in mind that the humbler classes of the Mexicans are basically Indian, many of whom have a strain of negro blood derived from black slaves carried to Mexico from Africa and the West Indies. Many of them have a considerable strain of Caucasian blood of Spanish and other stocks, sufficient to increase the number of intermarriages between them and Caucasian Americans, while their Indian and limited amount of African blood facilitates marriage between them and negroes. Such a situation will make the blood of all three races flow back and forth between them in a distressing process of mongrelization.

Displacement of native Americans working in industry, of farm workers and farm tenants and the injury done to American farmers and farm life by the increase of migrant Mexican labor working in industry, on farms, and elsewhere

Below are quoted a comparatively few of the great number of statements made in these reports on this phase of the problem:

"Have tendency to make people leave the country. Driving small farmers and tenants out of the country. The chief effect of this Mexican labor is to make for a plantation type of farming, driving out not only the white laborer and tenant but also the small landowner. Nearly all of the cantaloupes and lettuce are raised by large companies using peon labor. The small farmer can not compete with them."—Scott B. Foulds, secretary-manager Imperial County Farm Bureau, El Centro, Calif.

"In domestic service, factory workers, and sales girls in stores, they are displacing most all whites in this city. The fact that 75 per cent of the population of this city is Mexican impresses me."—R. T. Glenn, San Antonio, Tex.

"Has driven out the good white labor."—Elizabeth R. Forrest, superintendent of schools for girls, San Antonio, Tex.

"Mexican labor has forced its way into white American establishments, replacing white drivers and clerks. Mexicans are employed by the railroad companies."—Bessie Kid Best, county superintendent, Flagstaff, Ariz.

"About 1920 or 1921 the daily wage was cut 75 cents. This had been a white man's camp; mostly Mexicans were brought in from Arizona, New Mexico, and old Mexico. The largest mine in this territory employs 95 per cent Mexicans."—Mrs. Charles F. Loker, former president of school board and member of Daughters of the American Revolution, Tonopah, Nev.

"White natives have moved away from here, because labor was too cheap. Many can not even get work, while the Mexican is put to work the day he arrives"—A. L. Suman, superintendent of schools, South San Antonio, Tex.

"Should not be allowed to come to the United States and take the place of American labor."—D. A. Walker, M. D., Mullen, Nebr.

"Yes; when Mexicans become numerous in any locality the Americans leave."—Doris E. Carlson, Sunnydale, Calif.

"Many Mexican women and girls now work in canneries."—J. Howard Hall, M. D., Sacramento, Calif.

"Because they work overtime and for probably lower wages they sometimes displace white laborers. This is particularly true on the railroads, as Mexicans are easier driven. Most of the laborers working in our canneries are Italians, Portuguese, and Mexicans."—Mabel E. Fulgham, secretary-treasurer county farm bureau, Sacramento, Calif.

"Mexican peons do practically all of the common labor at $1.25 to $2 per day. American labor would cost twice that much."—S. J. Isaacks, lawyer, El Paso, Tex.

"Wages about one-half those paid in North and East we think, unskilled, semiskilled, and clerical."—R. R. Jones, assistant superintendent of schools, El Paso, Tex.

"Mexican domestics at least 90 per cent in the homes of El Paso."—Gunning-Casteel (Inc.), retail druggists, El Paso, Tex.

"Mexican laborers are paid $1.25 to $1.50 and American laborers are paid $1.75 to $2. Mexican peon labor will work for less, longer hours, and plenty of abuse."—Paul Creswell, jr., El Paso, Tex.

"A white man would not and could not live under the same conditions as the average Mexican laborer. I have been in some sections of the State (Texas) where the Mexican farm tenant is displacing the native-born tenant very rapidly."—N. G. Heslep, cotton buyer, Houston, Tex.

"The influx of Mexicans into this industrial section will lower the wage scale for all, lowering the standard of labor for white and black labor. On section work they have already replaced the negro."—Hugo Hartsfield, superintendent of schools, Pasadena, Tex.

"Many are employed in cotton mills and cheap clothing factories."—William N. Michels, county democratic executive committeeman, Houston, Tex.

"Mexicans are rapidly replacing American women and girls in factories, laundries, and such places.

"They take interest in elections. They have been taught in their country to vote every chance they had."—S. D. Mathews, mining, Houston, Tex.

"If they continue to take the labor market it will so lower our every form of social, financial, economic, home, school, and church life as to destroy it as it is here to-day. The American of yesterday will be a thing of the past, a great master class on one hand and the peon on the other, the great middle class perishing, disappearing, submerged."—F. W. Miller, realtor, Los Angeles, Calif.

"Work in considerable number in canneries. Some of white women object to working with Mexicans or Filipinos."—A. H. McFarland, M. D., Mountain View, Calif.

"They are displacing white labor in increasing numbers in canneries and in fruit-packing plants and in fruit picking."—Clarence F. Bronner, chairman legislative committee, Grange No. 408, Morgan Hill, Calif.

"Worse than this, it lowers the morale of American laborers; they feel degraded when employed on the same job with Mexican or Japanese laborers. Many Americans will not accept employment where Mexicans and Japanese laborers are employed."—F. E. Ashcroft, health officer, Chulavista, Calif.

"Mexican women and girls are employed in our canneries."—Fred M. Stern, merchant, leather goods, San Jose, Calif.

"They all work, even the 6-year-old children; consequently the American women are displaced because the Mexican does not demand anything. We are displeased very much with increasing Mexicans."—E. F. Gattis, grocer, Cerpentino, Calif.

"In laundries, canning, packing, etc., considerable displacement. Future American manhood and womanhood ought to have equal consideration with businesses that cry for protection against the importation of cheap goods and import cheapest kind of labor from most backward nations."—R. B. Haddock, district superintendent schools, Oxnard, Calif.

Mexicans employed in the textile industry

Oriental Textile Mills, Houston, Tex., nationality of employees: Americans, 46 per cent; Mexicans, 54 per cent.

El Paso Cotton Mills Co., El Paso, Tex., nationality of employees: Americans, 5 per cent; Mexicans, 95 per cent.

San Antonio Cotton Mills, San Antonio, Tex., nationality of employees: Americans, 9 per cent; Mexicans, 91 per cent. (Above taken from statement compiled October 25, 1929, by Hon. Charles McKemy, Texas State commissioner of labor.)

The following quotations are some of the many expressions of the ruinous effects of this imported Mexican peon labor upon farmers and farm life, through its influence in aggravating the overproduction of American farm products and the ruin of the market therefor:

Increasing surplus of farm products

"If our farmers are raising a surplus, why should they import more laborers to create more surplus?"—Mrs. Elsie J. Bozeman, county superintendent of schools, Hanford, Calif.

"'Tendency' is too mild a word. It has already gone far toward completely displacing native farm labor and tenants. Only selfish Americans desire Mexican immigration. I have seen constant and increasing evidence of development of a situation very harmful to American life (of a desirable type)."—Elmer C. Nash, realtor and school teaching, Tucson, Ariz.

"They almost clean out white laborers on the farm. They are of no credit to any country."—M. A. Shipman, farmer, Westminster, Colo.

"If the sentiment of the whole people of east and west Texas could be obtained, a large majority would favor the Box bill. The Mexican can take a frying pan, 50 cents worth of beans, a blanket, and work a week. American white people can not compete with their labor."

"Am above an average cotton farmer of this section. If I can not get my cotton gathered without them, the next year I won't plant so much and neither will others. The reduction in acreage is about all that is going to help us cotton farmers. We ought to favor your bill."—A. M. Coleman, farmer, Roscoe, Tex.

"The large landowners of south and west Texas import this cheap labor into Texas to grow cotton and other farm products in competition with our native-born citizens. How many years will it take, if conditions are allowed to remain as they are, before our Mexican immigrants will hold the balance of power in the election of our officers?"—State—R. A. Calmess, farmer, Huntsville, Tex.

"Let this committee compare the needs of individual farmers, real Americans, who depend on the land for a living and on whom our integrity as a nation depends, with those of a few big agricultural companies, not farmers themselves but capitalists, not dependent for a living on the earnings of farms, and decide which is the most legitimate need."—Conrad Frey, physician and farmer, Melvin, Tex.

"The same state of mind prevailed among the early cotton planters of the eighteenth century in regard to cheap labor as represented by the negro slave trade. To-day we clearly see the evils of our negro problem. Far-sighted Americans can never allow ill-educated groups to pollute our already polyglot streams with the lowest type of Central Americans."—M. M. Kornfield, Houston, Tex.

"These and the Southwest Texas Chamber of Commerce are interested in cheap labor, quick profits, and to hell with the good of our country."—J. Middleton, post commander, American Legion, Uvalde, Tex.

"This is one of the reasons that the farmer of Texas finds it impossible to improve his condition. He has to compete with the peon class of Mexicans in raising and selling his cotton crop. I dare say that more than 1,000,000 bales of last year's cotton crop in Texas was raised by such a class of farmers. This is one way of giving the cotton farmers some relief, by placing Mexico and other countries under the same quota applying to European immigration."—M. J. Tibilett, farmer, route 1, Victoria, Tex.

"This is to inform you that the farmers of the Rio Grande Valley are 95 per cent for the Box bill."—Charles Worbs, Las Cruces, N. Mex.

Cotton production cheapest where Mexican labor used

"One of the counties, Nueces, and one of the best locations in the county, Robstown, for producing cotton cheap, tested the cost out on 10,000 acres for 1929. Here the land is level and the rows long. Two rows at a time has the stalks cut, the land bedded, dragged off, planted and cultivated by tractor or team as preferred. The labor, Mexican, is the cheapest in the belt for both chopping and picking. The test was made by the county agent in cooperation with the chamber of commerce and farmers. The per acre cost for one-third of a bale per acre was $34.43."—Farmers Marketing Journal, February, 1930.

"If you can get the Mexican quota you will have done more for the cotton farmers than all the farm boards that could be appointed. The big cotton farmers in south Texas, who plant thousands of acres, make and gather it with Mexican labor. They branch out all over west Texas and wind up on the south plains.

All the farmers I have talked with are in favor of restrictions."—T. D. Weddington, aged farmer, Hale Center, Tex.

"I live in the northern part of New Jersey, in the heart of an agricultural district, surrounded by manufacturing cities. There are some Mexicans in this section, not what might be termed a great many. They are not needed on the farms or in the cities. They are degraded, dirty, immoral, and wholly undesirable."—Wm. H. Gould, route 1, Clifton, N. J.

"The native white laborer and small farmer need protection against this influx of alien labor. It is the howling minority that clamor for this class of labor."—Ernest Bond, Beeville, Tex.

"As a farmer and one that speaks this Mexican lingo as fast as they do, can say that we got all the Mexicans in the United States of America than we need and more, too."—G. N. Wilson, merchant and farmer, Midland, Tex.

Effects of Mexican population on social and political conditions

Many of the Mexican people, who have long inhabited portions of the Southwest participate in political affairs there. Many of these are, of course, worthy people, but the majority of even our older Mexican population shows a persistent tendency to reproduce, wherever their numbers are sufficient, much the same conditions which their Mexican compatriots have made and persistently maintained in Mexico.

Few of the newer Mexican immigrants are naturalized. They stand at or near the bottom of the list of the percentage of those who become citizens by naturalization. A majority of the reports collected in this survey indicates that, in the greater numbers of communities to which these migrating Mexicans go, they do not participate noticeably in public affairs; though there are some 295 reports of such participation. Only 115 of these report on the effect of Mexican participation in political affairs. Nearly all of these come from cities or sections where native Mexicans and Mexicans brought by older immigration are numerous. Practically all of the 115 reports on the effect of such Mexican participation in elections declare its influence to be bad.

All that is said on this subject in these reports may be summed up in a few words. Generally, alien Mexicans do not have enough intelligence or interest in public affairs to become citizens or to permit those who can vote to do so; but, where they have resided long enough and are sufficiently numerous to permit them to be utilized by political machines, they do participate and exercise an influence almost wholly bad. This is at its worst in the boss and ring-ruled cities and regions where certain classes of politicians and corporations use them for selfish purposes and with great harm to the public welfare. If their numbers continue to increase at the rapid rate which has prevailed with increasing speed for two or three decades, they will add the weight of their numbers, ignorance, and subjection to boss manipulation, and all that is worst in the political life of those cities and regions.

The following quotations from a comparatively few of the reports mentioned give correct indications of the effects of this Mexican population on political and social conditions:

"I have served all over our West and Southwest and know from personal observation as well as hearing from others and members of this organization, of which I am president, that Mexicans can add nothing to this people. I sincerely trust that some stop can be put to their great influx.

"I am writing as the president of the National Security League, a patriotic society which has some ten or twelve thousand members scattered all over the United States.

"Very truly yours,

"R. L. BULLARD,

"*Major General, United States Army, Retired, President.*"

"Most Mexicans vote the way their leaders tell them. Mexican labor is the poorest labor we can get."—E. G. Austin, secretary Grange, president school board, Allison, Colo.

"Local Mexican vote predominates politics and is usually for sale to highest bidder."—C. A. Davlin, M. D., Roy S. Schafon, realtor, Alomaso, Colo.

"All city offices except superintendent of schools is being held by them for years. Outvote the whites 3 to 1."—C. H. Ellis, Jaroso, Colo.

"They are undesirable citizens generally."—Richard Russell, M. D., city health officer, Arvada, Colo.

"Vote for the largest bribe."—Henry Beech, secretary Grange No. 399, Hillside, Colo.

"Mexicans are undesirable element. Although some of them are in the third generation they are as foreign to us and speak exclusively Spanish."—August Fast, retired banker, Denver, Colo.

"They hold the balance of power, vote just as the priest tells them, and get the poorest officers possible. We think these people should be left away from here."—Henry L. Crawford, secretary Grange, Cortez, Colo.

"The Mexican is the greatest detriment that the United States has to contend with."—G. A. Ashbo, M. D., city health unit director, Rockyford, Colo.

"City has had to stand expense of sending Mexicans back to old Mexico."—T. T. Lundy, legislative board, B. of L. E., Pueblo, Colo.

"Mexicans are sometimes easily influenced around election times and their votes can be bought."—Harvey Wilcox, automobile dealer, El Paso, Tex.

"If there is not some further restriction, it is only a question of time until the entire border will be Mexicanized."—S. J. Isaacks, lawyer, El Paso, Tex.

"They burden our schools only to make bootleggers, burglars, and other criminals. Our charitable institutions, courts, and jails are jammed. They constitute a real burden to society."—M. J. Frederick, druggist, El Paso, Tex.

"They control public affairs in the Rio Grande Valley of Texas, where they elect all officials, and crime and corruption are very bad there."—Dick Young, attorney and farmer, Houston, Tex.

"My observation is that after the Mexican laborer pays * * * his service graft to the foreman on the job, he has little left to distribute among merchants.

"The insanitary and crowded conditions in which they live are a distinct menace to the health of the community.

"Why there seems to be a sentiment in some quarters to encourage this immigration can only be explained along selfish lines.

"South Texas, capable of tremendous agricultural development, should attract a high class of settlers, and will never come into its own until this undesirable element of population has been gotten rid of."—A. A. Wright, Loan & Securities Co., Houston, Tex.

"Our county hospital cases are 85 per cent Mexican."—Mrs. Claud J. Carter, San Antonio, Tex.

"Dependent on their jobs as city or council employees, they follow the commands of their bosses at elections. They are so closely watched that they can not do otherwise."—William Haensler, vice president Federal Employees' Association, San Antonio, Tex.

"Officials here buy poll taxes for Mexicans that shows up on election day, then see that he votes their way. Makes it impossible to get a good man in any office, city or county. Makes it hard in enforcing laws."—J. C. Russell, advertising, San Antonio, Tex.

"We believe our labor conditions warrant a step that will protect our working class from foreign invasion of cheap labor. Our Nation shows nearly 3,000,000 working people either half time or no work at all. The time for that most important step is now and should not wait until it is too late."—Mrs. B. G. Miller, Crete, Nebr.

"Just a poor class. Increase crime, make no pretense become citizens, increase paupers."—J. J. Jewett, retail lumber, Riverton, Wyo.

"This immigration should be restricted."—John F. Weller, Altoona, Pa.

"I think we should close the doors to the Mexicans as we did the Japanese."—Ida M. Smith, Leadore, Idaho.

"Mexican vote predominates. American born and raised Mexicans will in time become assimilated if the old Mexico native can be stopped."—E. A. Wells, secretary Scottish Rite Bodies, El Paso, Tex.

"They vote as a leader dictates and that isn't very satisfactory."—Robert P. Ley, farmer, Seneca, N. Mex.

"With a large Mexican population, the morality, social conditions, and environment are very bad."—M. D. Lakey, district-school superintendent, Fabens, Tex.

"Only the lower form of Mexicans are coming, and mostly not able to take care of themselves."—L. D. Crisinger, merchant, groceries, fruit, and vegetables.

"They are the worst menace to California of any other nationality."—M. C. Bonner, grocer, Los Angeles, Calif.

"It should not take Congress long to determine the oversupply of Mexicans in this county. They are brought here largely by railway systems and large land corporations, paid low wages, dismissed to pauperism as soon as need ceases, then the counties care for them."—Charles F. Teech, superintendent city schools, San Luis Obispo, Calif.

"Poor material for citizenship. Patrons of county hospital and Red Cross, children generally undernourished. Adult Mexicans rarely learn to speak English."—William M. Hood, M. D., city and county health officer, Sonora, Calif.

"All seem to vote and line up with the undesirable element in politics. I believe that the small amount that is saved in wages by employing them is lost ten times over by the increase in crime, pauperism, and diseases caused by their presence in this country."—Ray Newmyer, secretary Grange No. 403, Center, Roggen, Colo.

"Usually vote instructions of others. I do not believe this continued bringing in of Mexicans on so large a scale is fair to American people or the white race."—Mrs. Elsie Peterson, secretary Grange No. 215, and officer in State Grange, Roggen, Colo.

"It is common practice for some candidate to get Mexicans lined up through some leadership who is susceptible to remuneration, who in turn will swing practically the whole vote."—Addison McCain, M. D., Ault, Colo.

"Mexicans participate in our elections; it makes no difference where they are born. Politicians vote them all alike."—A. J. Hartman, retail merchant, Miami, Ariz.

"After the Mexicans have become citizens they are worthless as far as being good citizens. They are used by the low-down politicians to swing the vote their way."—C. W. Van Hook, retail merchant, Miami, Ariz.

"The Mexicans frequently boast we got this country from them and that they have practically taken it back without firing a shot."—H. M. Brown, mine broker, Miami, Ariz.

"Our prisons, hospitals, and charitable institutions, and police courts are practically overwhelmed with these numerous aliens, Indian-Mexican criminals, paupers, and insane."—J. C. Brodie, contractor, Superior, Ariz.

"Charities report that 80 per cent of people seeking aid are Mexicans."—H. S. Johnson, county attendance supervisor, Tucson, Ariz.

"It is a crime against civilization to permit the United States to be flooded with Mexican-Indian peons."—J. F. O'Reilly, agent-manager, Atlas Mines, Silver Bell, Ariz.

The foregoing brief quotations from statements made in these reports are a fair indication of the showing they make as to the effect of this Mexican infiltration as stated in the analyses of these reports made in advance of the quotations. There is not complete unanimity on the parts discussed, as doubtless a number of these questionnaires fell into the hands of the minority of the people of the Southwest who favor the continued admission of this class of alien Mexican peons. By far the greater number of our requests for reports went to people of whose views on this question we had no previous indication. Because they were retail merchants and business men, officials in farm organizations, public-health officials, and superintendents of schools, we expected them to be familiar with the problems of their communities and willing to make fair reports on what we knew in advance to be a serious problem.

From hundreds of reports of similar import to these we have made no quotations. Very few reports from officials of labor organizations have been quoted—not because they are untrue but because labor is known to have a direct financial interest in the situation being reported upon. While we deeply sympathize with the distress which this movement is bringing to laboring people and their families, we have been and are doing our utmost to protect them, along with the community and general welfare and the future of great sections of the Southwest and of the whole country. We have endeavored to advise this committee, Congress, and the country, so far as they will note our words, of what other high-class people say about the effect of this infiltration upon every interest of the country, including the meat-and-bread welfare of working people and their families.

JOHN C. BOX,
THOMAS A. JENKINS,
Members House Committee on Immigration and Naturalization.

PERSONAL VIEWS ON RESTRICTION OF IMMIGRATION FROM WESTERN HEMISPHERE BY HON. THOMAS A. JENKINS

To the IMMIGRATION COMMITTEE,
House of Representatives.

GENTLEMEN: In addition to the joint report heretofore made to you by Hon. John C. Box and myself, I beg leave to submit the following observations in the hope that the same may be of some assistance to Members of Congress interested in immigration problems:

RESTRICTION OF IMMIGRATION PRACTICED EARLY IN NATION'S HISTORY

The regulation of the admission of foreigners into our country has always been a live subject. Even in colonial days bars were effectively erected by each colony against those whose presence promised any opposition to the orderly procedure of that colony.

The people of each colony welcomed those whose ideals were similar to theirs, but indicated a strong antipathy toward those with different ideals and ambitions. Thus restriction of immigration was in effect very early in the history of our country, although without the sanction of statutory enactment.

These differences were not sufficient to affect the growth of the country. The foundations of our Republic were not laid upon the differences that existed among the colonists, but rather upon the marks of similarity. Oppression by the fatherland was visited upon each of the colonies without any apparent favoritism. Common oppressions encouraged common sympathies; common sympathies produced common hatreds, and the fire of common hatreds started the flames of war. In times of war immigration is greatly lessened, and so it was during the Revolutionary War. But with the return of peace the question again became one of lively interest, as is witnessed by the comments of Jefferson, Hamilton, Adams, and others of our great statesmen of that time. The establishment of a new government, the corner stone of which was liberty, was as a pillar of fire to guide the feet of the unfortunate people of the world who lived in the darkness of political and economic serfdom. As the sunlight attracts the flower so this new Nation attracted the liberty loving and the oppressed of the whole world. Immigration to the United States from that time forward until the passage by Congress of the quota law in 1921 stands out as one of the wonders of the world. Nothing in the history of the movement of populations has ever equaled it in numbers or in effect upon the world.

THE IMMIGRANT AS A PIONEER

An army of immigrants worked its way across the Alleghenies and spread itself out across the Northwest Territory and in a few years had populated the Louisiana Purchase, and in less than 60 years had discovered the gold mines of California. Gradually they pushed the frontier back until it lost itself in the Pacific. With no more frontiers, with our large cities crowded to the limit, with production surpassing consumption, the day came when it was plain to the statesmen and economists of the country that we could not assimilate a million and a quarter of new immigrants annually, together with thousands that came in as visitors and that came in surreptitiously. We were compelled to put up the bars. This was done by diplomatic negotiations and by the passage of legislation restricting immigration from all the countries of the world, except from the countries of the Western Hemisphere. Restriction of immigration is now the fixed policy of our Nation. Nobody who has the best interests of our country at heart now denies that this is a safe and proper policy. There are still some people who resolve every international proposition in the light of what may be best for the country from whence they came, but they are getting fewer and fewer.

RESTRICTION ON WESTERN HEMISPHERE

This brings us to the consideration of the question so frequently asked as to why restrict immigration from Germany, England, Ireland, and the other countries of Europe and permit unrestricted immigration to flow in from Mexico and other countries of the Western Hemisphere?

President Hoover in his message to the present Congress upon its convention in December, 1929, said:

"Restriction of immigration has from every aspect proved a sound national policy. Our pressing problem is to formulate a method by which the limited number of immigrants who we do welcome shall be adapted to our national setting and our national needs."

Hon. JAMES J. DAVIS, the Secretary of Labor and chief of the Immigration Service of the Nation says, "The unlimited flow of immigrants from countries of the Western Hemisphere can not be reconciled with the sharp curtailment of immigration from Europe."

There are some plausible reasons advanced in opposition to laying a quota restriction upon the countries of the Western Hemisphere. I shall discuss two of them.

First. It is feared that we may strain the present cordial diplomatic relationship that now obtains between our country and the countries of the Western Hemisphere.

Second. It is feared that agriculture along the southern and northern borders of the United States will suffer if deprived of Mexican labor which, it is claimed, it needs to plant and harvest the seasonal crops of that section.

The first argument falls when we consider that all nations concede that it is the right of any nation to restrict immigration within its borders. Practically every nation employs some system of restrictions. When we were about to apply the quota law to Europe in 1921 we heard the same argument, and when we were about to apply the national-origins system of quotas in 1928 and 1929 we heard the same argument, but in neither case did any complications develop. None will develop if restriction is applied to the countries of the Western Hemisphere. Canada has restriction laws and no doubt will enact others as her economic and political needs manifest themselves.

THERE IS SUFFICIENT LABOR FOR AGRICULTURAL INTERESTS OF SOUTHWEST

The second question presents two aspects. It is very doubtful whether there is any shortage of agricultural labor in that section, and if there is it presents no different question than was presented to many branches of industry when previous immigration laws were enacted. A shortage in one branch of industry is not to be supplied from other countries if there is a great surplus in a hundred other branches of industry in our own country. Adjustment is the remedy in that situation. When the restrictive measures were being considered in 1921 and prior thereto many employers in the industrial section of the country were opposed to giving up their right and chance to procure cheap labor from foreign countries and prophesied dire disaster. But the high standard of living which is the greatest difference between our country and any of the other countries of the world must be maintained and this can not be done by the employment of cheap foreign labor. It is encouraging to know that most of those who complained have realized their errors and are now ardent restrictionists.

The great bulk of labor on the farm or in the truck gardens is not skilled, as can be testified to by any of us who were brought up on the farm. I maintain that there are sufficient idle men in the Southwest to do all the work needed to keep up the production to a maximum. No one can gainsay the fact that Mexican labor is grossly inefficient, and this inefficiency is not altogether due to the Mexican, either. It is due in great part to the method of handling it. The old methods of the days of slavery and the contract-labor methods have long since been abandoned by employers who demand efficiency. When the employer of the Southwest is shut off from his apparently inexhaustible supply of peon labor from Mexico he will realize what employers have learned in other sections of the country and will encourage efficiency They have learned that cheap labor is not synonymous with efficient labor.

If the agriculturist of the Southwest could keep his Mexican peons from migrating into the interior of the country and from competition with the American-born laboring man in many of the fields of labor, he would have a better claim on the sympathies of the American public. Great numbers of Mexicans come in annually. Many are expected to return, but once in the United States it is easier to travel the highways of our country than to return to Mexico, and the public charity of our large cities is more plentiful than that offered anywhere in Mexico.

PERSONAL SURVEY

Not long since I made a survey of the situation all along the southern and southwestern border from New Orleans to San Francisco. I made this survey in my own way and at my own expense. I am thoroughly convinced that there are enough Mexicans lolling idly in the warm sun of the cities of the Southwest to do all the labor required in that whole section by working one-half time, while they work only about one-third of the time now. There are thousands traveling the roads as itinerant vagrants who will never become an asset to the man power of our country.

Why keep out the bright young immigrants from the countries of Europe and permit these unassimilable vagrants to come into the country?

In making this survey I had occasion to visit the Mexican sections of many of the large cities of the Southwest. Whether cheap labor causes poor home conditions or whether poor home conditions is the cause from which cheap labor comes may be a question, but there is no gainsaying the fact both cheap labor and poor home conditions are destructive of the progress of our country regardless of which is cause and which is effect.

I found that in each of these cities where the percentage of Mexicans in the total population is high, the per capita purchasing power is correspondingly low. The Mexican family was usually very large and the living conditions poor. The Mexican has none of the pioneer spirit that characterized other nationalities that have contributed so mightily toward the growth of the Nation. The last of many revolutions was in progress during the time of my visit. I saw one Federal army and two rebel armies. These armies were nothing more than motley mobs. Each army was followed by a mob of women and children supposed to be the wives and children of the soldiers. They expected to be maintained from the plunder collected by the army to which they were attached. At what was heralded as one of the decisive battles of the war fought at Juarez, Mexico, opposite El Paso, at which the only casualties were a few horses, the Federal army fled into El Paso and sought the protection of the United States. I saw this army camped at Fort Bliss and fed by the United States troops stationed there. The women and children outnumbered the soldiers many times. The news of the good rations provided by our soldiers spread down into Mexico and a constant stream of women and children were coming in claiming to be connected with the army through relationship with some soldiers. The Army officer in charge of Fort Bliss was forced to refuse further additions to this mob, and the immigration authorities turned back hundreds seeking admission. The condition in the rebel army was much worse than that of the Federal army for they had no source from which they could receive rations and they subsisted upon what they could procure from plunder and forage. These poor ignorant soldiers in both armies knew not what they were fighting for. Misguided by unscrupulous leaders they blindly subjected themselves to danger for the benefit of some bandit who sought to rob some other bandit of his power and property. In no country in the world can a bandit be transformed into a general so quickly as in Mexico. Such a transformation is frequently accomplished in a few hours.

CONCLUSIONS

All this substantiates the thousands of reports received by Judge Box and myself in the survey made by us and a part of which we have heretofore made to your honorable committee.

By song and ballad the negro has been identified with the cotton fields and the watermelon patches of the South and Southwest for generations. The story of the heroic plainsmen of Texas has spurred our youth to high resolves to be courageous and valorous ever since the day of Sam Houston and Davy Crockett, but each of these admirable classes of our population has been driven from its throne by the sinister, silent flood of Mexican immigration that has washed it far back from its once secure moorings. In fact, the negro has been supplanted almost altogether by the Mexican in the territory 200 miles north from the Rio Grande. And the plainsman has receded before the onrush of Mexicans that have supplanted his cattle ranches with cotton fields which yield a larger return to the big plantation man of the Southwest, and has now lost himself in the population of the large cities or has moved on to the highlands of the Northwest. The Mexicans have so preempted the track work of the railroads as that practically all of it in the Southwest is done by them, and even as far north as Chicago nearly 50 per cent of all track workers are Mexicans—and practically all this is the result of a desire to employ cheap labor. If we are to keep American business for Americans, we must keep American jobs for Americans.

There can be no question but that economic and hygienic conditions among the Mexicans in our country are very bad in many cases. The average is far below that maintained by Americans. Crime and vagrancy among Mexicans are serious handicaps to their desirability as citizens and lowers their efficiency as laborers. General undesirability of the Mexican because of his shiftlessness and propensity to shirk is clearly established from the reports that we received. This summary, together with other data procured by us, lead me to believe that there are at present about 2,000,000 Mexican-born Mexicans in the United States.

The Mexican can not be blamed for his desire to come to the United States and to enjoy the superior facilities of our country. A visitor to El Paso, Tex., or to Nogales, Ariz., or to any of the other border cities will see a contrast between the standards of living in the United States and those of Mexico that will be most astonishing. Nogales is a small city on the boundary between the United States and Mexico. It is located in a valley probably one-quarter of a mile wide, which runs north and south. From the top of the bordering mountains on the east side of the valley runs an international wire fence to the top of the opposite mountains. This fence runs directly through the city and divides it into two parts—American Nogales and Mexican Nogales. A railroad track runs up and down the valley. Trains coming north stop at Nogales, Mexico. A watchman opens a large wire gate and the train, after passing the inspection of American customs and immigration officials, pulls into Nogales, Ariz., and stops.

The contrast between the general conditions on either side of this wire fence is unbelievable. The American city is a clean, healthy, and prosperous community. The Mexican city is typically Mexican—poor buildings, poor streets, ragged children, dirty foodstuffs sold by dirty men and women. Loafers on every curb and corner, and listless lollers everywhere.

The Mexicans have been most unfortunate. Of an ancestry which promises little—a mixture of native Indian with West Indian negro and Spaniard—with an environment that can hardly be expected to conduce to progress, with a political background of hundreds of years of banditry, murder, rapine, mobs, and assassinations, what can be expected of him? The so-called higher classes have utterly failed to appreciate the rights of the unfortunate. The unfortunate has been oppressed and enslaved until the peon class far exceeds the upper class in the population. Illiteracy is almost universal in many sections; poverty stalks everywhere; immorality is so common that decency is a rare virtue, but over it all are the dishonest, debased, grafting officials who live off of the oppression of various kinds heaped on a poor benighted people. It has been said that no nation can outlast the patience of its poor. May the time soon come when this maxim will be again proved by another enslaved people losing their patience and demanding their rights.

It is not my object in this article to discuss any special plan for effecting the restriction of Mexican immigration. Any plan that will adequately restrict should be approved by Congress. Since restriction is our natural policy, it is folly to apply this doctrine to the front door and neglect to apply it to the back door.

Respectfully submitted.

THOMAS A. JENKINS.

FURTHER STATEMENT OF FACTS FOUND AND CONCLUSIONS REACHED BY MR. BOX, BASED ON SOURCES OF INFORMATION OTHER THAN THE FOREGOING INQUIRIES AND ANSWERS

KNOWLEDGE OF MEXICANS AND MEXICAN IMMIGRATION

I have lived in Texas, a Mexican border State, throughout my entire life. Indeed my forefathers were there while Texas was yet a part of Mexico. My acquaintance with Mexican people of all classifications, from the fortunate, dominating few, to the mass of oppressed and wretched Mexican peons whom the upper classes treat as degraded inferiors, has afforded me considerable opportunity to observe them and the economic, social, and political results produced wherever large numbers of them are assembled.

In the active practice of my profession as a lawyer I have often visited many of the counties of the Rio Grande border from El Paso to the lower valley, and the cities San Antonio, Austin, and Houston, farther north and east, where I had opportunity to see Mexican-border conditions and the tendencies of Mexican-peon population.

Having taken some active part in the political and public affairs of my State, I have for many years noted the effect of the lower stratum of Mexican life upon the political and social problems of that region.

During more than 10 years' service as a Member of the House of Representatives and of this, its Committee on Immigration and Naturalization, I have given study to the problem of Mexican immigration. Following up my former observations by special studies, during the latter half of the year 1929, while my colleague on this committee, Hon. THOMAS A. JENKINS, and myself were making the survey on which we are reporting, I visited 40 to 50 of the counties of Texas and all of the larger Texas cities in which this population is greatest and can be studied at best advantage.

I extended my travels entirely across the State of Oklahoma, through a great portion of the middle and western parts of Kansas, nearly twice across the beet-sugar producing areas of Colorado, and the full length of the State of New Mexico. Nearly all of this travel was done in an automobile which afforded me and my assistants opportunities to make stops and side trips wherever there was a prospective opportunity to observe the Mexican peon migration and its effect upon the communities into which it was pouring.

IMPORTED FOREIGN LABOR WANTED

The claim that these peons should be admitted in large numbers because their labor is needed on farms, on railroads, in mines, in industry, and elsewhere, is a repetition of the arguments which have been made by the same or kindred interests against every proposition to restrict immigration from Asia and Europe, throughout the struggles of the country to protect itself against the perils which such immigration has threatened and, in disturbing measure, actually brought.

In every instance, as the country became sufficiently aroused to act, the adoption of the restrictive policy has proven that the claims of the objectors were unfounded.

A look into the facts of the present situation convincingly argues, as experience has in other instances proven, that the sounder economic policy harmonizes with the demands of racial, social, and political considerations for restriction.

PRESENT UNEMPLOYMENT EXTENSION

There is now widespread and very extensive unemployment in the United States. A practically unlimited amount of data proving this could be presented, but the fact is too well known to require proof.

The writer has observed this unemployment and the fact that Mexican peons are being employed to displace native white and negro labor from such work as is being done, at lower wages and under much worse living and working conditions, in great areas of the country. The extent of this unemployment and displacement has been and is extremely distressing.

My effort has been to study this question entirely from the viewpoint of the welfare of my fellow Americans and the Nation, now and hereafter. If any hostility to these humble Mexican peons, with whose ignorance, poverty, lowly conditions, and bad prospects for the future, I sympathize deeply, has colored my findings or facts or conclusions as to the policy dictated by the public welfare, I have not been conscious of such hostility. I am quite sure that I have not approached this problem, made these inquiries, visited these regions, and made these observations as the hired servant of men or corporations whose object is present money getting.

The information I have gathered from all sources mentioned and from all others convinces me that the conclusions which Congressman JENKINS and I have reached from our joint survey are correct in fact and should control the policy of this committee in reporting legislation to restrict the incoming tide of Mexican peon immigration and urging its passage.

IMPORTED PAUPER MEXICAN LABOR AND THE FARM PROBLEM

I solicit the patience of members of this committee and others studying this problem while I undertake a brief development of the effect of the importation of these pauper peons upon the farmers and farm life of the southern and southwestern portions of the Nation.

The displacement of American farm workers, tenants, and small home-owning farmers, the impoverishment and consequent injury to the rural life of the South and Southwest inevitably results from the lack of agricultural and rural prosperity among American farmers. These are to a large extent caused by unfavorable marketing conditions under which farm products are sold. This last is substantially aggravated by the importation of myriads of low-grade peons being poured into farms and rural communities. I shall dwell but briefly upon the overproduction of farm products in an undertaking to make plain that the importation of this labor tends strongly toward the further injury to the classes of people who have heretofore constituted the largest and best portion of the agricultural communities of the Southwest. The same classes have throughout the history of the country constituted the body of the wholesome farm population of the country.

One of the several major factors working toward the impoverishment of farmers and people who live by farm labor and from the products of small and moderate sized farms is the overproduction of their marketable crops, as measured by the consuming and buying power of those to whom they must be sold. The following quotations from the Agricultural Outlook for 1930, issued by the United States Department of Agriculture January 7, 1930, show this situation:

CATTLE

"The prospective increases of beef cattle and dairy production during the next five years, with little prospect of compensating increases in demand, will tend to depress rather than raise the gross income of farmers."

"Grazing is likely to suffer seriously within the next few years from expansion in the number of cattle, particularly in the Corn Belt."

"Range growers should guard against losses likely to result from making additional capital investments in the cattle enterprise with a period of falling cattle prices not far away."

WHEAT

"Wheat-acreage expansion is going forward in the face of competition from many countries of the world, and with a possibility of a downward long-time trend of wheat prices."

LETTUCE

"With the continued tendency toward the expansion of lettuce acreage, particularly in California and Arizona, the industry is facing a real problem in the orderly distribution of the crop * * *."

"Growers should not, however, assume that markets can be expanded sufficiently to absorb a large immediate increase at the present level of prices."

TOMATOES

"In spite of heavy losses to the fall crop in Florida and Texas, there is danger that the spring planting in these two States, and in the Imperial Valley of California, is being overdone * * *."

"If growers in the early States have carried out the full acreage in the dimensions reported, they face much lower returns than were received in 1929 * * *."

"Acreage in the second early States (South Carolina, Georgia, Louisiana, Mississippi, and Texas) shows a pronounced upward trend, having trebled from 1918 to 1928 * * *."

"Any further increase in 1930 appears extremely inadvisable."

ONIONS

"Onion growers in most States will find it to their advantage to somewhat reduce their acreage in 1930 as compared to 1929."

CITRUS

"A slightly downward trend is now indicated, but production is on a high level and the industry is still confronted with a difficult marketing problem * * *."

"In view of the prospective large increase in production, especially of grapefruit, during the next few years, and the probable depressing effect on prices, only those with a background of wisdom and skill in production that comes from successful experience or adequate training should contemplate new acreage, even for replacement purposes."

TALK OF REDUCING COTTON ACREAGE

This committee, and the reading public of the United States, are familiar with the great effort now being made by the National Farm Board to reduce the acreage of cotton.

A special committee of trained and able business men selected by the United States Chamber of Commerce and the industrial conference board to investigate "the condition of agriculture in the United States and measures for its improvement," in its carefully prepared report, made in 1927, page 104, said:

"It is clear that the overexpansion of our agricultural area due to all these forces is to a large extent responsible for the present agricultural difficulties."

In discussing the unfavorable situation and the prospects for cotton growers, the same report, page 68, said:

"The situation in cotton is further adversely affected by the great expansion of cotton acreage which has taken place during recent years. The acreage rose from 33,036,000 acres in 1922 to 48,730,000 in 1926. The increase is in the main due to the development of cotton production in the western parts of Texas and Oklahoma. * * *"

"Under the influence of all these factors, one cotton farmer in west Texas or west Oklahoma is able to attend to 100 or more acres of cotton, and to produce his crop at a cost far lower than the cotton farmers in the eastern parts of the belt. It is largely the competition from these newy developed regions which is holding the price of cotton at a level insufficient for most farmers in the older cotton sections."

A practically unlimited amount of authoritative data showing the same conditions traced to the same cause could be presented but the presentation of more of it would merely tax the time and burden the record of this committee with proof of a situation known to exist.

IMPORTED LABOR ADDING TO OVERPRODUCTION OF OTHER CROPS

Very much of such crops as lettuce, tomatoes, onions, citrous fruit, and cotton are now being grown by this labor. This committee is asked to continue the present exemption of Mexico, the West Indies, and Latin America from the quota restrictions of the immigration law, in order that the cheap and subservient labor coming from those regions may continue in the face of the fact that it augments this overproduction of agricultural commodities. One of the gentlemen who pressed this demand most insistently was Mr. C. B. Moore, manager-secretary of the Western Growers Protective Association, who advised the committee that the regions and growers represented by him needed some 80,000 transient laborers in addition to their regular employees to engage in the production of crops grown in southern California and Arizona, prominent among which is lettuce. Within a few weeks after Mr. Moore had made this statement to the committee in connection with a labor strike in those regions, as reported in the Los Angeles Times of February 19, 1930, Mr. Moore said:

"Under present strike conditions there is too much lettuce being shipped, and yesterday it became necessary to bring into action the Imperial Valley Lettuce Clearing House in order to restrict shipments to 250 cars a day * * *.

"Lack of profitable lettuce markets in the East and other parts of the United States, due to financial depression, may make it necessary for the growers to curtail their shipments further, and if lettuce must be thrown away, the field is the best and cheapest place to leave it. The present price of lettuce is below the cost of production."

The Los Angeles Times, from which this statement is taken, is one of the diminishing number of publications continuing to insist on the admission of more and yet more Mexican peon laborers.

Many others who have taken substantially the same position as taken by Mr. Moore have had their statements not only contradicted but overwhelmed by the developments in their own communities, which have become known to the committee and to the public. The report of the commission selected by the United States Chamber of Commerce and the Industrial Conference Board, quoted above, points to the enormous increase in the cotton acreage of western Texas and Oklahoma. It could have as truly pointed out the large amount of cotton being produced on irrigation projects in other southwestern localities during recent years.

IRRIGATION PROJECTS AND MEXICAN LABOR ENLARGING COTTON CROP

The writer visited some of these cotton-producing irrigation projects during recent months and saw a vast acreage now producing heavy crops of cotton, which only a few years before he had seen in sheep and cattle ranches. Large irrigated fields of fertile land are producing several times as much per acre as the average cotton land throughout the Cotton Belt. Towns have grown where only railroad sidings or small stations with a few adjacent cottages formerly existed. Large gin plants, with the yards surrounding them covered with cotton wagons and bales of cotton already ginned and pressed, are located where sheep, goats, and cattle grazed only a few years before. Farther to the northeast in the semiarid regions formerly believed to be unsuited to anything but grazing purposes are now cultivated vast fields of cotton where an individual hired worker, usually working for nonresident landowners, can cultivate three to four times as much acreage in cotton as can be tilled by the owner or tenant of the small to moderate sized farm, who has heretofore produced the bulk of the cotton crop. Many of the pleas made before this committee for the admission of these Mexicans as farm laborers have specified they are wanted to grub new land and cultivate and gather cotton and truck crops. That class of labor has done most

of the work necessary to this great expansion of the cotton-producing acreage. These are the laborers which observers see doing the greater part of the work of preparing the land and cultivating and gathering the crops in the regions mentioned. They are undoubtedly adding annually hundreds of thousands, if not millions, of bales to the cotton crop of the Southwest.

It would be hard to imagine anything more absurd than the plight of our Department of Agriculture and the National Farm Board in pointing out the ruinous overproduction of these crops, particularly cotton, while at least some of the very same officials are urging the public, and even this committee, to continue, facilitate, and increase the overproduction of which they complain by the addition of alien Mexican laborers to do this work, mainly for speculative farmers.

Every alien Mexican laborer who helps to do any of this work is in direct competition with native white and colored farm laborers, farm tenants, and farm owners of the nonspeculative type, looking to their own labor and the farms rented or owned and worked by them for a livelihood.

Under these conditions there is neither fairness nor promise of success in any effort to induce average tenants and farm owners to lessen their acreage of such crops, when they and others who have studied the problem know that their self-restraint will be, to a large extent, nullified by the increase of production by imported alien laborers working for nonresident or speculative employers.

This situation has been growing worse for some years. The survey made by Congressman JENKINS and the writer and the report of the studies made by Doctor Garis show that it still exists, and that many men are seeking to make it worse—some selfishly, some unwittingly, all unfortunately. The facts are plain and overwhelmingly demand the enactment of this legislation.

JOHN C. BOX.

PROHIBITION

Mr. IRWIN. I ask unanimous consent to extend my remarks in the RECORD.

The SPEAKER. Is there objection?

There was no objection.

Mr. IRWIN. Mr. Speaker, after 18 months of consideration of the prohibition-enforcement question, the Wickersham Commission in a 160-page report to the Congress of the United States gives its findings and recommendations, collectively and singly, which, to the average individual, to put it mildly, is amazing. The recommendation of the commission as a whole is entirely at variance with the recommendation of its individual members, and in order to square themselves with the public, members of the commission have filed separate reports in a manner apologizing, or at least explaining, how they agreed to signing the collective report.

The report is certainly amazing—a report in which the radical dry and the radical wet are loudly proclaiming a victory for their way of thinking, but to the average citizen who sits down and studies the report carefully it must be admitted that it gives us little information but what was already known to everyone who has given this question any consideration whatever. One outstanding conclusion of the commission is "what has been apparent all along"—that prohibition and its enforcement under the eighteenth amendment is a dismal failure, yet after 11 years of this failure the commission advises giving more time so as to make it a unanimous failure. They say in their report that the causes of its failure are many, some of which are:

1. Trying to change and control the habits of 122,000,000 people in the United States who in the past were free to drink or not to drink according to their own choice or will.

2. That no law can be enforced which is not backed up by public opinion and manifestly so prohibition is not backed up by public opinion.

3. The dual authority of Federal and State not cooperating with each other. This is true; many States not sanctioning the prohibition law and many of which have recently repealed their State enforcement law.

4. The ease with which liquor can be obtained, namely, by importation, diversion of industrial alcohol withdrawn for legitimate manufacturing purposes into bootleg channels, the ease with which alcoholic beverages can be made by distilling, fermenting, and brewing, which is carried on extensively in the private homes.

Before prohibition there were over 2,000,000,000 gallons of liquor consumed in the United States, with a commercial value of over $2,000,000,000 annually. In this day and time we hear much of the economic depression in the United States, and that is true. Not so with the bootlegging industry of to-day. It is booming and commercially amounting to billions of dollars. In fact, in spite of drought and economic conditions, it is one industry that is very prosperous because we have people who have the appetite for liquor, have been accustomed to its use and will pay the price for it whether it be legitimate or not. That is the reason that the bootleg industry is flourishing; men and women in all walks of life are patronizing the bootlegger because they will drink liquor, because their conscience tells them they have a moral right to do so, yet the eighteenth amendment forbids them to do what they have had the legal and moral right to do since the beginning of time. The bootlegging industry, on a large or a small scale, will continue just so long as our Government refuses to permit some legal method by which the people may secure liquor for beverage purposes. Naturally the bootlegger does not want liquor legalized.

If it is, his business is gone. If the Government of the United States would adopt a method whereby liquor could be manufactured, sold, and transported in conformity with the proposal of Mr. Anderson, a member of the commission, and whereby pure liquor could be obtained by the man or woman desiring the same at a reasonable price, then and not until then will the bootlegger be forced to go out of business. Let our distilleries, breweries, and wineries manufacture pure products under Government supervision, with such supervision in the sale of same, and this great question of the liquor traffic would be solved. Put our distilleries and breweries to work and bring about contentment by giving employment to millions of our working men and permitting those who want to drink to do so, which is their inherent right to do so long as they do not interfere with the same right of others who do not choose to drink.

We were in hope that the Wickersham commission would agree on the remedy. They admit the failure of prohibition but yet they recommend a continuance of the eighteenth amendment with all its evils and waste of money, crime rampant, disrespect to our Constitution and laws, indeed a sad state of affairs, a great example for the coming generation. How long are we to have this present state of affairs? We can not agree with the recommendations of the Wickersham Commission merely to prolong the misery, we believe the eighteenth amendment should be amended.

RELIEF OF HOMELESS AND DESTITUTE CHIPPEWA INDIANS

Mr. CRAMTON. Mr. Speaker, I have one other request. Yesterday the bill (H. R. 10932) for the relief of homeless and destitute Chippewa Indians in Forest, Langlade, and Oneida Counties, Wis., was passed. I had an understanding with the committee that this bill would not be called up in my absence, and it was only through an inadvertence that it was called up. I have discussed this with the gentleman from Montana, the chairman of the committee, Mr. LEAVITT, and I ask unanimous consent that the proceedings of the House by which the bill was passed be vacated and the bill restored to the calendar.

Mr. SCHAFER of Wisconsin. Reserving the right to object, would that procedure meet with the approval of the entire committee reporting the bill?

Mr. CRAMTON. I do not know about that. I had a direct understanding with the gentleman from Montana [Mr. LEAVITT] that because I was engaged in a hearing this bill would not be called up in my absence. It was only through an inadvertence, when he had a large number of bills in his charge, that this occurred. I have consulted the gentleman and it is agreeable to him.

Mr. STAFFORD. Reserving the right to object, I shall not object if I may have the assurance that this bill will be called up on the next Calendar Wednesday, because I would not feel I was doing justice to the author of the bill, my colleague from Wisconsin [Mr. SCHNEIDER] to consent to vacation of the proceedings in his absence.

Mr. CRAMTON. I may say that I have discussed this with the gentleman from Wisconsin [Mr. SCHNEIDER] to-day. It is a bill I think he would prefer to have passed, but I told him I was going to take this course and I think he has no real objection to my taking this course. I said to

him that I had no objection to its being called up next Calendar Wednesday and, in fact, I am willing to make that request, although it is not within my power to determine whether it shall be called or not.

Mr. STAFFORD. I think it should be coupled with the request that it be brought up next Wednesday.

Mr. GARNER. May I state to the gentleman that neither the gentleman from Montana [Mr. LEAVITT] nor the gentleman from Wisconsin [Mr. SCHNEIDER] is here.

Mr. CRAMTON. They both knew I would make this request.

Mr. BLANTON. Mr. Speaker, I make the point of no quorum.

Mr. CRAMTON. Now, it is not necessary to do that. This occurred simply because I was engaged yesterday in important work, and I had a promise which the gentleman from Montana would certainly have lived up to except for an accident.

Mr. BLANTON. The gentleman can take it up to-morrow morning.

Mr. LAGUARDIA. What is the gentleman's request?

Mr. CRAMTON. To vacate the proceedings on the passage of the bill.

Mr. LAGUARDIA. The gentleman from Michigan must know that it is bad practice and a bad precedent to establish that once a bill is passed, to come in at the conclusion of the day's session when there are but few Members present——

Mr. CRAMTON. Mr. Speaker, I withdraw the request.

LEAVE OF ABSENCE

By unanimous consent, the following leave of absence was granted:

To Mr. BRUNNER, for an indefinite period, on account of illness.

To Mr. TARVER (for the day), on account of illness.

SENATE BILLS REFERRED

Bills of the Senate of the following titles were taken from the Speaker's table and under the rule referred as follows:

S. 4799. An act to extend the times for commencing and completing the construction of bridges across the Missouri River at or near Farnam Street, Omaha, Nebr., and at or near South Omaha, Nebr.; to the Committee on Interstate and Foreign Commerce.

S. 4800. An act to authorize certain officers of the United States Navy and Marine Corps to accept such decorations, orders, and medals as have been tendered them by foreign governments in appreciation of services rendered; to the Committee on Naval Affairs.

SENATE ENROLLED BILLS SIGNED

The SPEAKER announced his signature to enrolled bills of the Senate of the following titles:

S. 872. An act to amend an act for the relief of certain tribes of Indians in Montana, Idaho, and Washington;

S. 4537. An act to relinquish all right, title, and interest of the United States in certain lands in the State of Louisiana; and

S. 5295. An act authorizing an additional per capita payment to the Shoshone and Arapahoe Indians.

ADJOURNMENT

And then, on motion of Mr. TILSON (at 6 o'clock and 36 minutes p. m.), the House adjourned until to-morrow, Friday, January 30, 1931, at 12 o'clock noon.

COMMITTEE HEARINGS

Mr. TILSON submitted the following tentative list of committee hearings scheduled for Friday, January 30, 1931, as reported to the floor leader by clerks of the several committees:

COMMITTEE ON WAYS AND MEANS

(10 a. m.)

To consider bills for the immediate payment of adjusted-compensation certificates.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of Rule XIII,

Mr. McSWAIN: Committee on Military Affairs. S. 4636. An act to authorize the Secretary of War to resell the undisposed of portion of Camp Taylor, Ky., approximately 328 acres, and to also authorize the appraisal of property disposed of under authority contained in the acts of Congress approved July 9, 1918, and July 11, 1919, and for other purposes; with amendment (Rept. No. 2414). Referred to the Committee of the Whole House on the state of the Union.

Mr. O'CONNOR of Oklahoma: Committee on Indian Affairs. H. R. 15263. A bill to relieve restricted Indians in the Five Civilized Tribes whose nontaxable lands are required for State, county, or municipal improvements; with amendment (Rept. No. 2415). Referred to the House Calendar.

Mr. WURZBACH: Committee on Military Affairs. H. R. 15620. A bill to authorize the Secretary of War to lend War Department equipment for use at the Thirteenth National Convention of the American Legion at Detroit, Mich., during the month of September, 1931; without amendment (Rept. No. 2416). Referred to the House Calendar.

Mr. JAMES of Michigan: Committee on Military Affairs. H. R. 14043. A bill to authorize the Secretary of War to lease Governors Island, Mass., to the city of Boston, Mass., and for other purposes; with amendment (Rept. No. 2421). Referred to the Committee of the Whole House on the state of the Union.

Mr. LEAVITT: Committee on Indian Affairs. H. R. 15498. A bill authorizing the President, through the Secretary of the Interior, to study, report, and recommend on a revision and codification of the statutes affecting the American Indians; with amendment (Rept. No. 2422). Referred to the Committee of the Whole House on the state of the Union.

Mr. LEAVITT: Committee on Indian Affairs. S. 1533. An act to authorize the Secretary of the Interior to extend the time for payment of charges due on Indian irrigation projects, and for other purposes; with amendment (Rept. No. 2423). Referred to the Committee of the Whole House on the state of the Union.

Mr. JAMES of Michigan: Committee on Military Affairs. H. R. 15437. A bill to authorize appropriations for construction at Tucson Field, Tucson, Ariz., and for other purposes; without amendment (Rept. No. 2424). Referred to the Committee of the Whole House on the state of the Union.

Mr. FISHER: Committee on Military Affairs. H. R. 9680. A bill to amend the act entitled "An act granting certain lands to the city of Biloxi, in Harrison County, Miss., for park and cemetery purposes," approved April 28, 1906; without amendment (Rept. No. 2425). Referred to the House Calendar.

Mr. CRAMTON: Committee on Appropriations. H. R. 14675. A bill making appropriations for the Department of the Interior for the fiscal year ending June 30, 1932, and for other purposes; with sundry Senate amendments (Rept. No. 2426). Referred to the Committee of the Whole House on the state of the Union.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of Rule XIII,

Mrs. KAHN: Committee on Military Affairs. H. R. 12178. A bill to authorize the Secretary of War to donate two bronze cannons to the Veterans' Alliance, of Vallejo, Calif.; without amendment (Rept. No. 2412). Referred to the Committee of the Whole House.

Mr. WURZBACH: Committee on Military Affairs. H. R. 12781. A bill to authorize the Secretary of War to donate certain bronze cannon to the Maryland Society, Daughters of the American Revolution, for use at Fort Frederick, Md.; without amendment (Rept. No. 2413). Referred to the Committee of the Whole House.

Mr. COCHRAN of Pennsylvania: Committee on Military Affairs. H. R. 444. A bill granting the distinguished-service medal to Capt. Albert B. Randall; without amendment (Rept. No. 2417). Referred to the Committee of the Whole House.

Mr. WURZBACH: Committee on Military Affairs. H. R. 10031. A bill for the relief of the Valley Forge Military Academy (Inc.); with amendment (Rept. No. 2418). Referred to the Committee of the Whole House.

Mrs. KAHN: Committee on Military Affairs. H. R. 10899. A bill to authorize the Secretary of War to donate two bronze cannons to the city of Benicia, Calif.; without amendment (Rept. No. 2419). Referred to the Committee of the Whole House.

Mr. KNUTSON: Committee on War Claims. H. R. 12683. A bill for the relief of Herman H. Bradford; with amendment (Rept. No. 2420). Referred to the Committee of the Whole House.

CHANGE OF REFERENCE

Under clause 2 of Rule XXII, committees were discharged from the consideration of the following bills, which were referred as follows:

A bill (H. R. 16672) for the relief of Victor Oscar Gokey; Committee on Military Affairs discharged, and referred to the Committee on Naval Affairs.

A bill (H. R. 16635) authorizing the relief of the McNeill-Allman Construction Co. (Inc.); of W. E. McNeill, Lee Allman, and John Allman, stockholders of the McNeill-Allman Construction Co. (Inc.); and W. E. McNeill, dissolution agent of McNeill-Allman Construction Co., to sue in the United States Court of Claims; Committee on Claims discharged, and referred to the Committee on the Judiciary.

PUBLIC BILLS AND RESOLUTIONS

Under clause 3 of Rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. WOOD: A bill (H. R. 16693) authorizing the purchase of the property known as the West Baden Springs Hotel, situated at West Baden, Orange County, Ind.; to the Committee on World War Veterans' Legislation.

By Mr. FITZGERALD: A bill (H. R. 16694) to repeal sections of the Revised Statutes omitted from the United States Code as obsolete although not repealed; to the Committee on Revision of the Laws.

By Mr. HOCH: A bill (H. R. 16695) to amend paragraph (8) of section 1 of the interstate commerce act as amended; to the Committee on Interstate and Foreign Commerce.

By Mr. MERRITT: A bill (H. R. 16696) to authorize the Secretary of Commerce to continue the system of pay and allowances, etc., for officers and men on vessels of the Department of Commerce in operation as of July 1, 1929; to the Committee on Interstate and Foreign Commerce.

By Mr. ADKINS: A bill (H. R. 16697) to incorporate the National Woman's Relief Corps, auxiliary to the Grand Army of the Republic; to the Committee on the Judiciary.

By Mr. HAWLEY: A bill (H. R. 16698) for survey of Scappoose Bay at St. Helens, Oreg.; to the Committee on Rivers and Harbors.

By Mr. IRWIN: A bill (H. R. 16699) to provide for the payment to veterans of the cash surrender value of their adjusted-service certificates; to the Committee on Ways and Means.

By Mr. STONE: A bill (H. R. 16700) restricting the appointment of employees in departments of the United States Government in certain cases; to the Committee on Expenditures in the Executive Departments.

By Mr. TIMBERLAKE: A bill (H. R. 16701) to grant certain lands to the State of Colorado for the benefit of the Colorado School of Mines; to the Committee on the Public Lands.

By Mr. FOSS: A bill (H. R. 16702) to authorize the enlargement and modernization of the United States Veterans' Bureau hospital at Rutland, Mass.; to the Committee on World War Veterans' Legislation.

By Mr. DALLINGER: A bill (H. R. 16703) to authorize the acquisition of additional land for enlarging the Capitol Grounds; to the Committee on Public Buildings and Grounds.

By Mr. KNUTSON: A bill (H. R. 16704) to extend for two years the time of the taking effect of the reapportionment of Representatives in Congress under the fifteenth and each subsequent decennial census; to the Committee on the Census.

By Mr. McMILLAN: A bill (H. R. 16705) to authorize the Secretary of the Navy to proceed with the construction of certain public works at the navy yard, Charleston, S. C., and for other purposes; to the Committee on Naval Affairs.

By Mr. LEAVITT: A bill (H. R. 16706) to authorize the Secretary of the Interior to extend the time for payment of charges due on the Blackfeet Indian irrigation project, and for other purposes; to the Committee on Indian Affairs.

By Mr. LUCE: A bill (H. R. 16707) to authorize the transfer of jurisdiction over public land in the District of Columbia; to the Committee on Public Buildings and Grounds.

By Mr. WHITTINGTON: A bill (H. R. 16708) to assist in the organization of agricultural credit corporations; to the Committee on Agriculture.

By Mr. CLANCY: Joint Resolution (H. J. Res. 488) to remove certain restrictions on physicians relative to medicinal liquors; to the Committee on the Judiciary.

MEMORIALS

Under clause 3 of Rule XXII, memorials were presented and referred as follows:

Memorial of the State Legislature of the State of Missouri, memorializing the Congress of the United States to immediately pass the Glenn Smith Act to the end that speedy relief may be brought to the farmers of these distressed drainage and levee districts; to the Committee on Irrigation and Reclamation.

By Mr. McCLINTIC of Oklahoma: Memorial of the State Legislature of the State of Oklahoma, memorializing the Congress of the United States to enact a law providing for the payment of adjusted-service compensation certificates issued to the World War veterans; to the Committee on Ways and Means.

By Mr. BLANTON: Resolution of the Senate of the State of Texas, passed by the Senate of Texas on January 19, 1931, by the vote of 17 yeas to 7 nays, rededicating itself to the cause of prohibition of the liquor traffic and urging the authorities of the Federal Government to uphold the eighteenth amendment and to require rigid enforcement of the prohibition laws, such resolution certified to by Hon. Bob Barker, secretary of the Senate of Texas; to the Committee on the Judiciary.

By Mr. HASTINGS: Memorial of the Legislature of the State of Oklahoma, memorializing Congress to enact legislation giving aid to the people of Oklahoma; to the Committee on Agriculture.

Also, memorial of the Legislature of the State of Oklahoma, memorializing Congress to enact legislation for the payment of adjusted compensation to World War veterans; to the Committee on Ways and Means.

Also, memorial of the Legislature of the State of Oklahoma, memorializing Congress to immediately pass House bill 12995 making an appropriation to aid in the work of public health in general and particularly in aid of maternity and infancy work; to the Committee on Interstate and Foreign Commerce.

Also, memorial of the Legislature of the State of Oklahoma, memorializing Congress to immediately pass House bill 12995 making an appropriation to aid in the work of public health in general and particularly in aid of maternity work; to the Committee on Interstate and Foreign Commerce.

By Mr. McKEOWN: Memorial of the State Legislature of the State of Oklahoma, memorializing the Congress of the United States to enact a law providing for the payment of adjusted-service certificates; to the Committee on Ways and Means.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of Rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. AYRES: A bill (H. R. 16709) awarding a Navy cross to Clair S. Christian; to the Committee on Naval Affairs.

By Mr. BEERS: A bill (H. R. 16710) granting an increase of pension to Katherine K. Burns; to the Committee on Invalid Pensions.

Also, a bill (H. R. 16711) granting a pension to John Henry; to the Committee on Invalid Pensions.

By Mr. BOYLAN: A bill (H. R. 16712) for the relief of Francis Stephen Smith; to the Committee on Naval Affairs.

By Mr. BRUNNER: A bill (H. R. 16713) granting a pension to Lena Margraffe; to the Committee on Invalid Pensions.

By Mr. BYRNS: A bill (H. R. 16714) for the relief of Emma Jenkins; to the Committee on Claims.

By Mr. CABLE: A bill (H. R. 16715) granting a pension to Elizabeth Jamison; to the Committee on Invalid Pensions.

Also, a bill (H. R. 16716) granting a pension to Hannah M. Garver; to the Committee on Invalid Pensions.

Also, a bill (H. R. 16717) granting a pension to Henrietta V. Reed; to the Committee on Invalid Pensions.

By Mr. CHASE: A bill (H. R. 16718) granting an increase of pension to Martha B. Beldin; to the Committee on Invalid Pensions.

By Mr. CLANCY: A bill (H. R. 16719) for the relief of Anthony Hogue; to the Committee on Claims.

By Mr. BRAND of Ohio: A bill (H. R. 16720) granting an increase of pension to Hannah Williams; to the Committee on Invalid Pensions.

Also, a bill (H. R. 16721) granting an increase of pension to Etta M. Wolf; to the Committee on Invalid Pensions.

By Mr. FENN: A bill (H. R. 16722) for the relief of Elizabeth R. Church; to the Committee on Claims.

By Mr. FINLEY: A bill (H. R. 16723) granting an increase of pension to Jane Jones; to the Committee on Pensions.

Also, a bill (H. R. 16724) granting a pension to Francis J. Coffey; to the Committee on Invalid Pensions.

By Mr. McFADDEN: A bill (H. R. 16725) granting an increase of pension to Jennie M. Kinnen Banner; to the Committee on Invalid Pensions.

By Mr. HASTINGS: A bill (H. R. 16726) granting an increase of pension to Mary A. Briggs; to the Committee on Invalid Pensions.

By Mr. HAWLEY: A bill (H. R. 16727) granting an increase of pension to Catherine Vidito; to the Committee on Invalid Pensions.

By Mr. HOUSTON of Delaware: A bill (H. R. 16728) granting an increase of pension to Nancy J. Gallaher; to the Committee on Invalid Pensions.

By Mr. JAMES of Michigan: A bill (H. R. 16729) to authorize the appointment of Frank T. Hines as a major general, United States Army, retired, and for other purposes; to the Committee on Military Affairs.

By Mr. KADING: A bill (H. R. 16730) granting an increase of pension to Susan A. Holden; to the Committee on Pensions.

By Mr. MILLIGAN: A bill (H. R. 16731) granting an increase of pension to Delilah Taylor; to the Committee on Invalid Pensions.

By Mr. MOUSER: A bill (H. R. 16732) granting an increased of pension to Polly Eckels; to the Committee on Invalid Pensions.

Also, a bill (H. R. 16733) granting an increase of pension to Amanda Delong; to the Committee on Invalid Pensions.

By Mr. SHORT of Missouri: A bill (H. R. 16734) granting a pension to Mary E. Mitchell; to the Committee on Invalid Pensions.

Also, a bill (H. R. 16735) for the relief of Joseph S. Somers; to the Committee on Claims.

By Mr. THURSTON: A bill (H. R. 16736) granting an increase of pension to Agnes Daniels; to the Committee on Invalid Pensions.

By Mr. UNDERWOOD: A bill (H. R. 16737) granting a pension to Alice M. Baker; to the Committee on Invalid Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

8957. By Mr. ANDREW: Petition from Newburyport (Mass.) Chamber of Commerce and chairman of Newburyport General Employment Emergency Committee, expressing opinion that an extra session of Congress would delay the return of prosperity to our country; to the Committee on Ways and Means.

8958. By Mr. BACHMANN: Petition of William E. Uber and other veterans of Wheeling, W. Va., requesting that Congress make immediate provisions for the prompt payment, at full face value, of their adjusted-compensation certificates; to the Committee on Ways and Means.

8959. By Mr. BLANTON: Petition of 277 ex-service men of the World War and of leading business men of the city of Winters, Tex., urging Congress to pass legislation requiring the Government to pay off at once in cash the adjusted-compensation certificates, such petition being sent by committee of ex-service men composed of L. L. Boon, Walter Lee Butts, and Froman M. Mills; to the Committee on Ways and Means.

8960. By Mr. BLOOM: Petition of residents of New York State, urging the passage of House bill 7884 providing for the exemption of dogs from vivisection in the District of Columbia; to the Committee on the District of Columbia.

8961. By Mr. BOHN: Petition urging the immediate cash payment on adjusted-compensation certificates to ex-soldiers concurred in by the Michigan State Senate and House of Representatives; to the Committee on Ways and Means.

8962. By Mr. BRIGGS: Telegram of J. V. Butler, post commander, Sam Houston Post, No. 95, American Legion, Huntsville, Tex., announcing unanimous indorsement by the ex-service men of Montgomery, San Jacinto, and Walker Counties, Tex., of House bill 3493 (the Patman bill), and urging its passage; to the Committee on Ways and Means.

8963. By Mr. CABLE: Petition of all the American Legion posts in Miami County, Ohio, requesting that immediate action be taken to authorize cash payment now of the full face value of the adjusted-service certificates, or not less than 65 per cent thereof; to the Committee on Ways and Means.

8964. By Mr. CHRISTGAU: Resolution adopted by members of the Matthew W. Sanders Post, No. 1721, of the Veterans of Foreign Wars, at Palisade, Minn., urging the immediate enactment of legislation providing for the cash payment of the adjusted-compensation certificates; to the Committee on Ways and Means.

8965. Also, resolution adopted by the Freemond Madson Post, No. 447, of the Veterans of Foreign Wars, at Albert Lea, Minn., urging the enactment of legislation providing for the cash payment in full of the adjusted-compensation certificates; to the Committee on Ways and Means.

8966. Also, resolution adopted by members of the Hanson-Raabe Post, No. 1656, Veterans of Foreign Wars, at Spring Valley, Minn., in favor of House bill 3493, which provides for the immediate cash payment of adjusted-compensation certificates; to the Committee on Ways and Means.

8967. By Mr. CLARKE of New York: Petition of the members of the Woman's Christian Temperance Union, Sidney Center, N. Y., urging Congress to enact a law for the Federal supervision of motion pictures, establishing higher standards before production for films that are to be licensed for interstate and international commerce; to the Committee on Interstate and Foreign Commerce.

8968. By Mr. FENN: Petition of citizens of Hartford, Conn., favoring the passage of House bill 7884, for the exemption of dogs from vivisection in the District of Columbia; to the Committee on the District of Columbia.

8969. By Mr. Fuller: Petition of Otis E. Busbee and various other citizens of Searcy County, Ark., urging the passage of legislation authorizing the payment of the adjusted-compensation certificates in cash at full face value; to the Committee on Ways and Means.

8970. By Mr. GIBSON: Petition of veterans of the World War of Windsor, Vt., and vicinity urging legislation to make possible immediate payment of adjusted-service certificates; to the Committee on Ways and Means.

8971. By Mr. HOGG of West Virginia: Petition of Ables Reyburn Post, American Legion Auxiliary, Ravenswood, W. Va., requesting passage of amendments to World War veterans' act giving pensions to widows and orphans, and other remedial legislation; to the Committee on Ways and Means.

8972. Also, petition of Victor Hamilton Post, No. 82, the American Legion, Grantsville, W. Va., requesting the immediate payment in cash of adjusted-compensation certificates now held by veterans of the World War; to the Committee on Ways and Means.

8973. By Mr. JAMES of Michigan: Petition of American Legion Post, No. 131, of Munising, Mich., urging immediate payment of adjusted-compensation service certificates, per Patman bill; to the Committee on Ways and Means.

8974. By Mr. JAMES of North Carolina: Telegram from the North Carolina Camp, Patriotic Order Sons of America, representing 8,000 North Carolina members, urging the passage of the proposed legislation for paying off the adjusted-service certificates of veterans of the World War. Also a letter from J. B. McCoy, North Wilkesboro, N. C., district commander of the fifteenth district, American Legion, Department of North Carolina, indorsing the Patman bill providing for the payment of the adjusted-service certificates of veterans of the World War; to the Committee on Ways and Means.

8975. By Mr. KADING: Resolution adopted by the Wisconsin State Council of Carpenters at its twelfth annual convention held in Wisconsin Rapids, Wis., December 10, 1930, requesting modification of the national prohibition law by exempting beer and light wines from the act; to the Committee on the Judiciary.

8976. By Mr. LANKFORD of Georgia: Petition of 125 citizens of Atkinson County, Ga., indorsing full payment of adjusted-compensation service certificates; to the Committee on Ways and Means.

8977. By Mr. MOONEY: Petition of Milton K. Sharp Post, No. 61, American Legion, indorsing pensions for widows and orphans and additional hospital facilities; to the Committee on World War Veterans' Legislation.

8978. Also, petition of Lakewood Post, No. 66, American Legion, Department of Ohio, indorsing cash payment of adjusted-service certificates; to the Committee on Ways and Means.

8979. By Mrs. NORTON: Petition of Vivisection Investigation League, of 67 Park Street, Tenafly, N. J., and others, urging the passage of House bill 7884; to the Committee on the District of Columbia.

8980. By Mr. PATMAN: Resolution of the Disabled American Veterans of the World War, District of Columbia Department, presented by E. C. Babcock, department commander, urging immediate payment of the full face value of the adjusted-service certificates; to the Committee on Ways and Means.

8981. Also, resolution of Ace-Rasmussen Chapter, No. 1, Disabled American Veterans of the World War, Washington, D. C., presented by Earl G. Hendricks, adjutant, urging the immediate payment of the face value of adjusted-service certificates; to the Committee on Ways and Means.

8982. By Mr. PATTERSON: Petition of veterans and citizens of the fifth district of Alabama, requesting payment of veterans' adjusted-service compensation certificates in cash; to the Committee on Ways and Means.

8983. By Mr. REED of New York: Petition of Woman's Christian Temperance Union, Phillips Creek, N. Y., indorsing House bill 9986; to the Committee on Interstate and Foreign Commerce.

8984. By Mr. ROBINSON: Petition signed by Minnie Riley, of Iowa Falls, Iowa, and vice president of the Woman's Temperance Union of that city, urging the passage of the Grant Hudson motion picture bill (H. R. 9986); to the Committee on Interstate and Foreign Commerce.

8985. By Mr. SELVIG: Petition of American Legion Post, of Hawley, Minn., favoring payment of face value of the adjusted-service certificates in cash; to the Committee on Ways and Means.

8986. Also, petition of Minnesota American Legion Auxiliary, favoring amendment to veterans' act to give pensions to widows and orphans and to service-connected veterans suffering from chronic constitutional diseases before 1925, and for adequate hospital facilities; to the Committee on World War Veterans' Legislation.

8987. Also, petition of Otto A. Sustad, of Viking, Minn., favoring immediate cash payment of adjusted-service certificates; to the Committee on Ways and Means.

8988. By Mr. SMITH of West Virginia: Resolutions of the Chamber of Commerce of Charleston, W. Va., opposing formation of four independent eastern railroad systems in so far as such program proposes the division of the Virginian Railway between the Norfolk & Western Railway and the Chesapeake & Ohio Railway, but favoring the proposal to allocate the Virginian Railway exclusively to the New York Central Railroad system; to the Committee on Interstate and Foreign Commerce.

8989. By Mr. SPARKS: Petition of Woman's Christian Temperance Union, of Penokee, Kans., requesting Federal supervision of motion pictures; to the Committee on Interstate and Foreign Commerce.

8990. By Mr. TEMPLE: Petition of Franklin Chamber of Commerce, of Franklin, Pa., urging tariff on crude petroleum and refined products thereof; to the Committee on Ways and Means.

8991. By Mr. WAINWRIGHT: Petition of 24 citizens of Westchester and Rockland Counties, favoring passage of House bill 7884; to the Committee on the District of Columbia.

8992. By Mr. WYANT: Petition of Chamber of Commerce of Monessen, Pa., protesting against a special session of Congress; to the Committee on Ways and Means.

8993. Also, petition of Middletown United Brethren Sunday School of Westmorland County, Pa., urging passage of Sparks-Capper amendment providing for elimination of unnaturalized aliens and counting only citizens in proposed congressional reapportionment; to the Committee on the Judiciary.

8994. Also, petition of Chamber of Commerce of Franklin, Pa., urging tariff on imports of crude petroleum and refined products therefrom; to the Committee on Ways and Means.

8995. By Mr. ZIHLMAN: Petition of residents of Maryland and the District of Columbia in support of House bill 7884 to prohibit experiments on living dogs in the District of Columbia; to the Committee on the District of Columbia.

SENATE

FRIDAY, JANUARY 30, 1931

(Legislative day of Monday, January 26, 1931)

The Senate met at 12 o'clock meridian, on the expiration of the recess.

The VICE PRESIDENT. The clerk will call the roll to ascertain the presence of a quorum.

The Chief Clerk called the roll, and the following Senators answered to their names:

Ashurst	Carey	Gillett	Hebert
Barkley	Connally	Glass	Heflin
Bingham	Copeland	Glenn	Howell
Black	Couzens	Goff	Johnson
Blaine	Cutting	Goldsborough	Jones
Blease	Dale	Gould	Kean
Borah	Davis	Hale	Kendrick
Bratton	Dill	Harris	Keyes
Brock	Fess	Harrison	King
Brookhart	Fletcher	Hatfield	La Follette
Capper	Frazier	Hawes	McGill
Caraway	George	Hayden	McKellar